Jogendra Chandra Ghosh Research Prize

THE 'KALIVARJYAS' OR PROHIBITIONS IN THE 'KALI' AGE

THEIR ORIGIN AND EVOLUTION AND THEIR PRESENT LEGAL BEARING

BY

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To

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M.A., D.Litt., LL.D.

Whose Dedicated Life

Shines

Like a Flame from a Flame Enkindled

At the Altar

of

Hindu Culture and Polity

CONTENTS

PREFACE

The subject of this treatise, which is an exact reprint of the Thesis for the Jogendrachandra Ghose Research Prize in Comparative Indian Law for 1933, is comparatively fresh and unexplored, and the treatment, therefore, is on lines marked out by the writer himself. It is original as a whole, except in the Section on *Sons other than the Legitimate and the Adopted*, in regard to which G. Sarkār-Śāstrī's work on Adoption has been largely helpful. The importance of the subject is dwelt upon in the opening and concluding paragraphs. The original texts of passages cited from the Vedic literature, unless of particular importance, have not been reproduced at length where authoritative English translations are given. The books mainly consulted and referred to will appear from the Index at the end, together with a few corrections admitting of inserttion therein. In the Sanskrit Index, besides the authorities, are included the *Kalivarjya* topics in italics.

The writer takes this opportunity of gratefully acknowledging his obligations to the authorities of the Sanskrit College in Calcutta and of the Saraswati Bhavan at Benares for facilities afforded to consult their libraries, to Mahāmahopādhyāya Cinnasvāmī Śāstrī, now Principal, College of Theology, Benares Hindu University, for a transcription of the *Kalivarjya* portion of the *Smṛtimuktāphala*, and to Paṇdit Vanamālī Vedāntatīrtha, M.A., for reference to the extract from the *Nityācārapaddhati*, and last but not least, to the Superintendent and the Proof Readers of the Calcutta University Press, without whose ready help and careful corrections a work of this nature, with numerous references, quotations and diacritical marks, could, even as it is, hardly have been presentable, to the public.

KALIVARJYAS

OR

THE PROHIBITIONS IN THE KALI AGE

THE TEXTS

The Kalivarjyas or practices prohibited in the Kali Age constitute a subject of varied and remarkable interest to a student of the Hindu Law and Dharma-śāstras and of the history of the Hindu society. Modern writers on Indian history and Hindu Law have been drawn to an incidental discussion of this topic, but a comprehensive enquiry into the nature and sources of these prohibitions, the circumstances that led to their promulgation, their varied acceptance and modifications by the writers of the Digests or Nibandhas, the light they throw on the history of the Hindu society and the extent to which they have in practice been observed in later times together with their legal bearing at the present time has not yet been attempted. Such an enquiry seems specially called for in view of the speculations that have of late been afoot on the lines of growth and development of the Hindu society and the evolution of its laws and customs in historical times.

The several practices prohibited in the Kali Age number in all above fifty. This number is obtained by piecing together several scattered texts. There are texts which ban some of these practices singly whether with special reference to the Kali Age or not, e.g., marriage with the maternal uncle's daughter prohibited in several Dharma-sūtras and

Saṃhitās or Niyoga or Levirate which Āpastamba declares as unfit for practice in a degenerate later age or Manu's repudiation of widow-remarriage as unsupported by Vedic hymeneal Mantras or the text purporting to be Baudhāyana's cited in the Smṛti-candrikā [1] or the espousal of a Śūdra wife to which Yājñavalkya is personally opposed or Śaunaka's text permitting only two kinds of sons in this age, etc. These texts will appear in their proper places in the treatment of the several usages. There are other texts which ban the practices in groups of two, five, seven, etc. These texts are here arranged according to their order in time as far as ascertainable, since they give at a glance the whole list in a connected form.

I. यथा नियोग[I]धर्म्मो नो नानुबन्ध्या[II]वधोऽपि वा ।
[III]तथोद्धारविभागोऽपि नैव सम्प्रति वर्त्तते ॥

cited in the Mitākṣarā and attributed to Nighaṇṭukārikā; in Hemādri the first line runs thus :

यथानियोगं धर्म्माणां न हि धेन्वा वधोऽपि च ।

II. देवराच्च सुतोत्पत्तिर्दत्ता [IV]कन्या न दीयते ।
न यज्ञे गोवधः कार्य्यः कलौ न च [V]कमण्डलुः ।

cited as Kratu's in Smṛti-candrikā. Kratu is cited in Mit. on Yāj. III. 29 but not this text.

III. दीर्घकालं [VI]ब्रह्मचर्य्यं धारणञ्च कमण्डलोः ।
गोत्रान्मातृसपिण्डाच्च [VII]विवाहो गोवधस्तथा ।
[VIII]नराश्वमेधौ [IX]मद्यञ्च [X]कलौ वर्ज्ज्यं द्विजातिभिः ॥

as Brahmapurāṇa text cited by Aparārka and Mādhava and as Ādi-purāṇa text in Smṛti-candrikā.

[1] विधिर्योऽनुष्ठितः पूर्व्वं क्रियते नेह साम्प्रतम् ।
पुराकल्पः स विज्ञेयो विधवाया नियोजनम् ॥

IV. गोपशुं देवरात् पुत्रं [XI] सत्रयागं कमण्डलुम् ।
सुराप्रयोगं [XII] भिक्षुश्च न कुर्व्वीत कलौ युगे ॥

anonymously cited by Aparārka on Yāj. I. 56.

V. अक्षता नरमेधश्च गोयज्ञश्च कमण्डलुः ।
देवराच्च सुतोत्पत्तिः कलौ पञ्च विवर्ज्जयेत् ॥

anonymous text in Aparārka on Yāj. I. 56. Also in Madana-pārijāta from Nigama and in Smṛti-kaustubha with the first line as :

अक्षता गोपशुश्चैव श्राद्धे [XIII] मांसं तथा मधु ॥

Smṛti-candrikā quotes it anonymously in the altered form :

देवराच्च सुतोत्पत्तिं गोमेधञ्च कमण्डलुम् ।
अक्षतां पौरुषं मेधं कलौ पञ्च विवर्ज्जयेत् ॥

VI. Smṛtyarthasāra of Śrīdhara (composed between 1150 and 1200) is cited as an authority in Smṛti-candrikā. This work is based on previous authorities mentioned in the two following ślokas which preface each section :

कामधेनौ प्रदीपेऽब्धौ कल्पद्रुमलतासु च ।
शम्भुद्रविड़केदारलोल्लटाद्यैश्च भाषितम् ।
मन्वाद्यनेकस्मृतिषु व्याख्यातप्रतिपादितम् ।
स्मृत्यर्थसारं वक्ष्यामि सुखानुष्ठानसिद्धये ॥

Śrīdhara introduces the Kalivarjyas in connection with Yuga-dharmas in these lines :

समयाचरिता धर्म्मा जातिदेशकुलोद्भवाः ।
ग्रामाचाराः परिग्राह्या ये च विध्यविरोधिनः ।
युगधर्म्माः परिग्राह्या सर्व्वत्रैव यथोदितम् ॥

XI. Smṛti-candrikā by Devaṇṇa[1] or Devānanda Bhaṭṭa, a digest of the highest authority in the South next to Mitākṣarā, has a longer extract prefaced with the words: तथान्येऽपि धर्म्मज्ञसमयं प्रमाणमाहुः ।

विधवायां प्रजोत्पत्तौ देवरस्य नियोजनम् । बालिकाक्षतयोन्योश्च वरेणान्येन संस्कृतिः । कन्यानामसवर्णानां विवाहश्च द्विजातिभिः । [XXXI] आततायि-द्विजाग्र्याणां धर्म्मयुद्धेन हिंसनम् । [XXXIa] द्विजस्याब्धौ तु नौयातुः-शोधितस्यापि संग्रहः । सत्रदीक्षा च सर्व्वेषां कमण्डलुविधारणम् । महाप्रस्थानगमनं गोहिंसा चैव गोसवे । सौत्रामण्यामपि [XXXII] सुराग्रहणस्य च संग्रहः । अग्निहोत्रहवन्याश्च लेहो लीढापरिग्रहः । वानप्रस्थाश्रमस्यापि प्रवेशो विधिचोदितः । वृत्तस्वाध्यायसापेक्षमघसंकोचनन्तथा । प्रायश्चित्त-विधानञ्च विप्राणां मरणान्तिकम् । संसर्गदोषः स्तेनाद्यैर्महापातकनिष्कृतिः । वरातिथिपितृभ्यश्च पशूपहननक्रिया । दत्तौरसेतरेषान्तु पुत्रत्वेन परिग्रहः । सवर्णानां तथा दुष्टैः संसर्गः शोधितैरपि । अयोनौ संग्रहे वृत्ते [XXXIII] परित्यागो गुरुस्त्रियाः । अस्थिसञ्चयनादूर्द्ध्वमङ्गस्पर्शनमेव च । [XXXIV] षड्भक्तानशनेनान्नहरणं हीनकर्म्मणः । शूद्रेषु दासगोपालकुलमित्रार्द्धसीरिणां । [XXXV] भोज्यान्नता गृहस्थस्य [XXXVI] तीर्थसेवातिदूरतः । शिष्यस्य गुरुदारेषु [XXXVII] गुरुवद्वृत्तिरीरिता । आपद्-[XXXVIII] वृत्तिर्द्विजाग्र्याणाम[XXXIX]श्वस्तनिकता तथा । प्रजार्थन्तु द्विजाग्र्याणां प्रजारणि-परिग्रहः । ब्राह्मणानां प्रवासित्वं [XLII] मुखाग्निधमनक्रिया । बलात्काराधि-[XLIII] दुष्टस्त्रीसंग्रहो विधिचोदितः । यतेस्तु [XLIV] सर्व्ववर्णेषु भिक्षाचर्य्या विधानतः । नवोदके [XLV] दशाहञ्च [XLVI] दक्षिणा गुरुचोदिता । ब्राह्मणादिषु शूद्रस्य पक्वतादि-

[1] In Buddhasing *v.* Laltusing (P. C.) 34A. 663, Devaṇṇa is said to have been a contemporary of Aparārka. He is dated before 1225 by Kane (p. 346), *i.e.*, a generation earlier than Hemādri.

XLVII क्रियापि च । XLVIII भृग्वग्निपतनैश्चैव वृद्धादिमरणन्तथा । XLIX गोतृप्तिशिष्टे पयसि शिष्टैराचमनक्रिया । L पितापुत्रविरोधेषु साक्षिणां दण्डकल्पनम् । यतस्सायं LI गृहस्थत्वं सूरिभिः सत्यतत्परैः । एतानि लोकगुप्तार्थं कलेरादौ महात्मभिः । निवर्त्तितानि कर्म्माणि व्यवस्थापूर्व्वकं बुधैः । समयश्चापि साधूनां प्रमाणं वेदवद् भवेत् ।

XII. Pṛthvī-candrodaya mentioned in Hemādri's Catur.-cintā. III. 182 and of a date earlier than 1250 had a Kali-varjya text similar to that in Parāśara-mādhava. It is mentioned as a source in Nirṇayasindhu.

XIII which precedes XIII (*a*) in Hemādri :

आदित्यपुराणे--अपथाः शकुनाः स्वप्नाः सामुद्रिकमुपश्रुतिः । उपयाचित-मादेशाः सम्भवन्ति कलौ क्वचित् । तस्मात्तन्मात्रलाभेन पश्च (?) न कारयेत् । तथा कर्म्मसमावेशादन्यान्यपि कलौ युगे ।

XIII (*a*). Hemādri's Caturvarga-cintāmaṇi dated between 1260 and 1270 has a long passage which consists of the first 17 lines of the Smṛti-candrikā text on Kalivarjya followed by the following lines thus prefaced :

वर्ज्यानि—विहितान्यपि कर्म्माणि धर्म्मलोपभयाद् बुधैः ।
समयेन निवृत्तानि साध्वभावात् कलौ युगे ।

LII परोद्देशात्मसंत्याग LIII उच्छिष्टस्यापि वर्ज्जनम् । प्रतिमाभ्यर्च्चनार्थाय सङ्कल्पश्च सधर्म्मकः । अस्थिसञ्चयनादूर्द्ध्वमङ्गस्पर्शनमेव च । सौमित्रश्चैव विप्राणां सोमविक्रयणन्तथा । षड्भक्तानशनेनान्नहरणं हीनकर्म्मणः । एतानि लोकगुप्तार्थं कलेरादौ महात्मभिः । निवर्त्तितानि कर्म्माणि व्यवस्थापूर्व्वकं बुधैः । समयश्चापि साधूनां प्रमाणं वेदवद् भवेत् । and concluding in the last three lines as in Smṛti-candrikā.

XIII (*b*). अग्निहोत्रं गवालम्भं संन्यासं पलपैतृकम् ।
देवराच्च सुतोत्पत्तिं कलौ पञ्च विवर्ज्जयेत् ।

Hemādri—Prāy. Khaṇḍa, p. 90.

XIV. Mādhava, son of Māyaṇa, in his commentary on Parāśara-smṛti, dated between 1335-1360 A.C. reproduces the Smṛti-candrikā passage with the same preface and with variant readings shown above. As Ādityapurāṇa passage he cites :

ऊढ़ायाः पुनरुद्वाहं ज्येष्ठांशं गोवधं तथा ।
कलौ पञ्च न कुर्वीत भ्रातृजायां कमण्डलुम् ।

These verses are followed by the last six lines of Text XI.

XV. Madana-pārijāta composed by Viśveśvara Bhaṭṭa under the patronage of King Madanapāla between 1360 and 1390 quotes the Smṛtyarthasāra on Kalivarjya with lines 8 and 12 to 14 left out and purporting to be taken from Sāra-saṅgraha (a work referred to also by Raghunandana and Anantadeva). Mad. Pār. although citing other passages from Āditya- and Garuḍa-purāṇas has none from them on Kalivarjya.

XV (*a*). Madanaratna-pradīpa (circ. 1425-50)—in Ms.—has a collection rendered in Sir W. Jones's general note to his translation of Manu : The sacrifices of a bull, of a man, or of a horse and all spirituous liquor must in the Kali age be avoided by twice-born men ; so must a second gift of a married woman and the larger portion of the eldest son, etc.

XVI. Raghunandana, a contemporary of Śrīcaitanya (born 1490), who wrote in the first half of the 16th century cites on the authority of Hemādri and Mādhava an Āditya-purāṇa passage in his Udvāhatattva running thus :

दीर्घकालं ब्रह्मचर्य्यं धारणञ्च कमण्डलोः । देवरेण सुतोत्पत्तिर्दत्ता कन्या प्रदीयते । कन्यानामसवर्णानां विवाहश्च द्विजातिभिः । आततायि-द्विजाग्र्याणां धर्म्मयुद्धेन हिंसनम् । वानप्रस्थाश्रमस्यापि प्रवेशो विधिचोदितः । वृत्तस्वाध्यायसापेक्षमघसंकोचनन्तथा । प्रायश्चित्तविधानञ्च विप्राणां मरणान्तिकम् ।

संसर्गदोषः पापेषु मधुपर्के पशोर्वधः। दत्तौरसेतरेषान्तु पुत्रत्वेन परिग्रहः। शूद्रेषु दासगोपालकुलमित्रार्द्धसीरिणाम्। भोज्यान्नता गृहस्थस्य तीर्थयात्राति-दूरतः। ब्राह्मणादिषु शूद्रस्य पक्कतादिक्रियापि च। भृग्वग्निमरणञ्चैव वृद्धादिमरणन्तथा। इत्यादीन्यभिधाय—एतानि लोकगुप्त्यर्थं कलेरादौ महात्मभिः। निवर्त्तितानि कर्म्माणि व्यवस्थापूर्व्वकं बुधैः। समयश्चापि साधूनां प्रमाणं वेदवद्भवेत्।

Excepting the first two lines which couple the first line of the Brahma-purāṇa and the first line of the Kratu text, the rest of the passage is that in Smṛti-candrikā.

XVII. From Bṛhannāradīya-purāṇa he quotes :

समुद्रयात्रास्वीकारः कमण्डलुविधारणम्॥
द्विजानामसवर्णासु कन्यासूपयमस्तथा।
देवरेण सुतोत्पत्तिर्मधुपर्के पशोर्वधः।
मांसादनं तथा श्राद्धे वानप्रस्थाश्रमस्तथा।
दत्तायाश्चैव कन्यायाः पुनर्दानं परस्य च।
दीर्घकालं ब्रह्मचर्य्यं नरमेधाश्वमेधकौ।
महाप्रस्थानगमनं गोमेधश्च तथा मखम्।
इमान् धर्म्मान् कलियुगे वर्ज्यानाहुर्म्मनीषिणः॥

These verses are also cited in Parāśara-Mādhava. They occur in Pūrvārdha, Chap. XXIV, of the printed Nāradīya and as Śls. 12-16, Chap. 22, of Bṛhan-nāradīya-purāṇa where for the underlined words are read :

LIV

देवराच्च, मांसदानं, वराय, नैष्ठिकम्।

XVIII. Dalapati's Nṛsiṃhaprasāda—an encyclopaedic work (composed between 1490 and 1512) has a short section on this topic giving a bare list in prose of 27 of these prohibitions and suggesting others.

दीर्घकालं ब्रह्मचर्य्यं कमण्डलुधारणं गोत्रान्मातुः सपिण्डविवाहो गोवध-नरमेधाश्वमेध-मद्य-देवरसुतोत्पत्ति-दत्तकन्याप्रदान-ज्येष्ठांशोद्धारण-भ्रातृ-

जायागमन-विधवाप्रजोत्पत्ति-देवरसुतोत्पत्ति- अक्षतयोनिबालिकापुनर्विवाह-आततायिब्राह्मणवध - मद्योद्वा- महाप्रस्थानगमन - गोमवगोवध - सौत्रामणी सुराग्रहणाग्निहोत्र - वानप्रस्थाश्रमस्वीकार - ब्राह्मणमरणान्तप्रायश्चित्तोपदेश-संसर्गदोषस्तेयान्य - महापातकनिष्कृति - दत्तौरसेतरपुत्रपरिग्रह-सोमविक्रयण-प्रभृतिधर्म्माः कलौ निषिद्धाः ।

XIX. Kalivarjya-vinirṇaya is a whole treatise by Dāmodara, son of Śaṅkara Bhaṭṭa and the grandson of Nārāyaṇa Bhaṭṭa (born 1513), of which the manuscript is in the Gaekwad Library. Dāmodara preceded Kamalākara. A copy of it has been obtained through the kindness of the Principal, Benares Sanskrit College.

XX. Nirṇaya-sindhu composed in 1612 by Kamalākara Bhaṭṭa has a section on Kalivarjya in which the passages from Bṛhan-nāradīya and Āditya-purāṇa (taken partly from Hemādri and partly from Mādhavīya and Pṛthvī-candrodaya) are cited as authorities.

XXI. Similarly Anantadeva, the son of Āpadeva, the great writer on Mīmāṃsā, devotes a section of his Smṛti-kaustubha (of the third quarter of the 17th century) to this topic in which he cites the passage from Smṛtyarthasāra supplemented by extracts from Āditya-purāṇa, Madana-pārijāta and Mādhavīya.

XXII. Smṛti-muktāphala of Vaidyanātha Dīkṣita is a popular Southern digest of about 1700 A.C. (1600?—Kane, p. 671) since it quotes from Dharma-śāstra-sudhānidhi (of Divākara, son of Mādhava and the sister of Nīlakaṇṭha, author of the Mayūkhas composed in 1686). In the treatment of this topic it cites the Garuḍa-purāṇa text from Mādhava, the Smṛtyarthasāra passage omitting three lines and the Smṛti-candrikā passage from Dharma-śāstra-sudhānidhi changing the order and omitting certain items.

XXIII. Dharma-sindhu of Kāśīnātha Upādhyāya is the latest work (dated 1790-91) to deal with this subject. It

gives a list of 44 of these prohibitions in verses slightly altered from the original text with a few of his own composition thrown in "for the satisfaction," as he says, "of the learned and for the lessening of the trouble of the unlearned."

Here Text XVII above is followed by :

मद्यं वर्ज्जं महापापे मरणान्तविशोधनम्। सौत्रामण्यादियज्ञेऽपि सुरापानग्रहस्तथा। मद्यभक्ष्या वामाद्यागमस्य तु न मानता। मीमांसादिनये सर्व्वशिष्टैश्च तदनादरात्। औरसो दत्तकश्चेतौ पुत्रौ कलियुगे स्मृतौ। अन्यान् दशविधान् पुत्रान् क्रीताद्यान् वर्ज्जयेत् कलौ। कौस्तुभे तु स्वयंदत्तस्तृतीयोऽपि कलौ विहितः। ज्येष्ठादिसर्व्वभ्रातॄणां समभागः कलौ स्मृतः। आततायिद्विजानां नो धर्म्मयुद्धेन हिंसनम्। अब्धौ नौयातुर्द्विजस्य प्रायश्चित्तेऽपि न संसर्गः। गवार्थे ब्राह्मणार्थे च प्राणत्यागः कलौ न हि। शिष्यस्य गुरुपत्नीषु न चिरं वासशीलता। आपदि क्षत्रवैश्यादिवृत्तिं विप्रः कलौ त्यजेत्। कलौ द्विजो नहि भवेदश्वस्तनिकजीविकः। द्वादशाब्दं गुरौ वासं मुखाग्निधमनक्रियाम्। यतेर्भिक्षां सर्व्ववर्णे कलौ त्रीणि विवर्ज्जयेत्। नवोदकनिषेधञ्च दक्षिणां गुरुवाञ्छिताम्। वृद्धरुग्णादिमरणं जलाग्निपतनादिभिः। गोतृप्तिमात्रे भूमिष्ठे पयस्याचमनक्रियाम्। पितृवादे साक्षिदण्डं कलौ पञ्च विवर्ज्जयेत्। घृतदुग्धादिभिः पक्वमन्नं शूद्रात् कलौ त्यजेत्। भिक्षामटन्व्रती रात्रौ न वसेद् गृहिणां गृहे। विधूमे सन्नमुसले काले भिक्षां कलौ त्यजेत्। चत्वार्य्यब्दसहस्राणि चत्वार्य्यब्दशतानि च। कलेर्यदा गमिष्यन्ति तदा त्रेतापरिग्रहः। संन्यासश्च न कर्त्तव्यो ब्राह्मणेन विजानता। शपथाः शकुनाः स्वप्नाः सामुद्रिकमुपश्रुतिः। देवपूजोपहारादेः संकल्पः कार्य्यसिद्धये। प्रश्नोत्तरं कालविदां संभवन्ति कलौ क्वचित्।

THE PROHIBITED PRACTICES

The fifty-five items that make up the prohibitions in the Kali Age cover the different departments of Hindu life and conduct—religious, social and legal. It is difficult to place them in categories that do not overlap at all in view of the Hindu conception of life in which the distinction between duties, secular and sacred, between social conduct, ceremonial practices, law and morals is far from rigidly observed—all coming under the comprehensive designation of Dharma. The threefold division of the Kalpasūtras—into Śrauta, Gṛhya and Dharma—does not furnish a perfect principle of classification since the treatment of any practice in one or other is sometimes accidental. As Medhātithi says: "A Gṛhya act is that which is treated in Gṛhyasūtra."[1] The authority of the Dharmasūtras is not confined to any particular Vedic school but extends over the conduct of the whole Aryan family and they often deal with ceremonial matters which properly pertain to the Śrauta Sūtras. As pointed out by Sir G. D. Banerjee in his Tagore Law Lecture: No such clear division is to be seen in the code of Manu, the highest authority, who in more instances than one provides purely religious sanctions for rules of civil life and Yājñavalkya himself treats of marriage, an important topic of law, in the section dealing with Ācāra. The principle adopted in the present treatise is roughly that of Yājñavalkya—the division into Ācāra, Vyavahāra and Prāyaścitta but the order is a little changed, the third being placed in the middle. In Ācāra the ceremonial topics are

[1] न गृह्यं नाम किंचित् कर्मास्ति। तत्र गृह्यस्मृतिकारोक्तं गृह्यमिति लक्षणया मन्तव्यम्—Medhātithi on Manu III. 67.

included and in Vyavahāra those that have a marked legal bearing and these naturally lead up to the conclusion—the present legal bearing of the prohibitions in the Kali Age. The order in which the Prohibitions are taken up for treatment is as follows :

I. A. Ritualistic and Ceremonial

		Number in the Texts.
1.	Agnihotia or fire-sacrifice—अग्निहोत्र, त्रेतापरिग्रह ...	XXX.
2.	Natal Agnihotra—प्रजारणिपरिग्रह	XL.
3.	Use of the Agnihotra-ladle after licking—लीढापरिग्रह	XVII.
4.	Blowing of the fire with the breath—मुखाग्निधमन...	XLII.
5.	Human Sacrifice—नरमेध	VIII.
6.	Horse Sacrifice—अश्वमेध	IX.
7.	Royal Sacrifice—राजसूय	XXIX.
8.	Cow Sacrifice—गोमेध	II.
9.	Offering of the Cow to the Fathers, Guests, etc.— वरातिथिपितृभ्यः पशूपाहरणम्	XIII.
10.	Slaying of the sacrificial animal by the Priest —शामित्र	XXVII.
11.	The use of Surā (spirituous liquor) in Sautrāmaṇī— सौत्रामण्यां सुराग्रहः	XXXII.
12.	The use of Surā in general—मद्य	X.
13.	Soma-selling—सोमविक्रय	XXVIII.
14.	Initiation into *Satras* or prolonged sacrifices— सत्रदीक्षा	XI.
15.	Worship of a deity under a vow—सधर्मक-प्रतिमापूजा	XXV.

B. The Duties of the Four Orders of Life

16.	Long-continued student-hood—दीर्घकाल-ब्रह्मचर्य्य ...	VI.
17.	Perpetual student-hood—नैष्ठिक-ब्रह्मचर्य्य ...	LIV.
18.	Behaviour with the Preceptor's wife—गुरुवद्-गुरुदारवृत्ति	XXXVII.
19.	The Preceptor's fee—गुरुचोदितदक्षिणा ...	XLVI.
20.	The use of the water-bowl or Kamaṇḍalu— कमण्डलुचर्य्या	V.
21.	The householder's pious improvidence— अश्वस्तनिकता	XXXIX.

II. Ceremonial Impurity and Purification

III. Legal

		Number in the Texts
50.	Marriage with the maternal uncle's daughter—मातुलकन्याविवाह	VII.
51.	Inter-caste marriage—असवर्णविवाह	XVIII.
52.	Levirate—नियोग	I.
53.	Widow-remarriage—विधवाविवाह	IV.
54.	Sons other than the legitimate and adopted—दत्तौरसेतरपुत्र	XXIII.
55.	Preferential share of the eldest—ज्येष्ठांश ...	III.

Text XIII—also found in Nirṇaya-sindhu and Smṛti-kaustubha—bars implicit reliance on omens and auguries—such as (śapatha) an oath at bathing at the Lolārka-tīrtha (near the Asi at Benares), (śakuna) auspicious signs such as a full pitcher at leaving home, (svapna) dreams, (sāmudrika) chiromancy, (upajācita) vows to make offerings to deities in certain events, (upaśruti) prognostications such as cries heard under certain conditions, and (ādeśa) oracles of astrologers and prophecies—which rarely succeed in the Kali age.'

Agnihotra

The prohibition of Agnihotra appears under two heads : (1) Agnihotra in general, and (2) Agnihotra of a special kind,—Natal Agnihotra. There is, besides, the prohibition of a practice connected with this sacrifice, that is, the licking of the large ladle (havanī) used in the sacrifice and the repeated use of the same without washing or cleaning.

No Vedic injunction is perhaps more imperative than the tending of the sacred fire by a Brāhmin.[1] Śat. Br., Kāṇḍa XII, Ch. IV, Br. 1. 1 says, Agnihotra is indeed a sacrificial session (*Satra*) ensuring death in old age, for people

[1] अग्निहोत्रं जुहोति स्वर्गकामः Tait. Saṃ. I. v. 9—in Śabara's commentary on Jaimini Sūtra I. iv. 3.

are set free from it either by old age or death. The sacred fires were three and bore different names[1] The abandonment of the sacred fires was a sin and ancient Smṛti texts abound with condemnations of such a lapse and expiations are prescribed therefor.[2] The difficulties of the daily performance of the rites on leaving home are touched upon in Śat. Br. XI. iii. 1. 6-8. According to one Vedic text to abandon the sacred fire is to incur the sin of slaying a Vīra where the word '*Vīra*' is taken to mean the son.[3] The Agnihotrin was required to be a married house-holder to whom a son was born.[4] In the Aitareya Brāhmaṇa the question is asked whether a widower should perform the daily fire-offering and the answer is given in the positive.[5] At another place in the Aitareya Brāhmaṇa the same question being raised the answer is given to the effect that if he does not marry again he should make over the duty to his son, son's son or daughter's son and Dakṣa says that a regenerate person should not be without an Āśrama even for a day.[6]

In regard to the penances for the abandonment of the sacred fires Manu prescribes different kinds according to the period for which one is without them.[7] According to Viṣṇu to be without the sacred fire is one of the sins (XXXVII. 28, 34; also Manu XI. 66).

1 गार्हपत्य, आहवनीय, दक्षिण।

2 Manu XI. 41—अग्निहोत्र्यपविध्याग्नीन् ब्राह्मणः कामकारतः। चान्द्रायणं चरेन् मासं वीरहत्यासमं हि तत्। And again अग्निहोत्र्यपविध्याग्नीन् मासादूर्ध्वं तु कामतः। कृच्छ्रं चान्द्रायणञ्चैव कुर्य्यादेवाविचारयन्।

3 वीरहा वा एष देवानां भवति योऽग्निमुद्वासयते। Kullūka on Manu XI. 41.

4 जातपुत्रः कृष्णकेशो अग्नीनादधीत। Śavara on Jaimini I. iii. 2-3.

5 उद्धास्य पुनरादधीत भागधेयेनैवमेतं संवर्द्धयति अथो शान्तिरेव अस्यैषा।

6 I. 10 अनाश्रमी न तिष्ठेत्तु दिनमेकमपि द्विजः।

7 Manu XI. 41.

In case of impurity of any kind expiation and re-habilitation of the sacred fire by means of a fresh rite as at the start were necessary. The question of fire-offering in the case of a widower is discussed in many places in the Smṛtis —Manu V. 168, Yājñavalkya I. 89 [1]. On the latter śloka Vijñāneśvara comments that the house-holder who has begotten no son or performed no sacrifice nor is entitled to any other Āśrama shall in the absence of another wife remarry and re-instal the fire.[2] He quotes two texts to the effect that during the life of the first wife to cremate the second with the sacred fire is a sin equal to the drinking of Surā.[3] On the death of the second wife the man who gives up the sacred fire is to be regarded as the slayer of a Brāhmin. These provisions are repeated by the later Smṛtikāras, such as Kātyāyana (XX. 9, XXI. 1).[4]

Vyāsa in I. 15 describing Tretāgnihotra as one of the sixteen Saṃskāras also shows the obligatory character of Agnihotra. Parāśara says that one who abandons the sacred fire turns into a vṛṣala or śūdra[5]. (XII. 29). In V. 13-14 he provides for the case of an Agnihotrin who dies

[1] Manu V. 168—भार्य्यायै पूर्व्वमारिण्यै दत्त्वाग्नीनन्त्यकर्म्मणि पुनर्दारक्रियां कुर्य्यात् पुनराधानमेव च। Yāj. I. 89. दाहयित्वाग्निहोत्रेण स्त्रियं वृत्तवतीं पतिः। आहरेत् विधिवद्दारानग्नींश्चैवाविलम्बयन्।

[2] अनुत्पादितपुत्रोऽनिष्टयज्ञो वाश्रमान्तरेष्वनधिकृतो वा स्त्र्यन्तराभावे।

[3] द्वितीयाञ्चैव यो भार्य्यां दहेद् वैतानिकाग्निभिः। जीवन्त्यां प्रथमायान्तु सुरापानसमं हि तत्। मृतायान्तु द्वितीयायां योऽग्निहोत्रं समुत्सृजेत्। ब्रह्मघ्नं तं विजानीयाद् यश्च कामात् समुत्सृजेत्।

[4] मृतायामपि भार्य्यायां वैदिकाग्निं न हि त्यजेत्। उपाधिनापि तत् कर्म्म यावज्जीवं समापयेत्
* * स्वयं होमासमर्थस्य समीपमुपसर्पणम्। तत्राप्यशक्तस्य सतः शयनाच्चोपवेशनम्।

[5] कृतदारोऽग्निपत्नीभ्यां कृतवेश्मा गृहं वसेत्। स्वकृतं वित्तमासाद्य वैतानाग्निं न हापयेत्। स्मार्त्तं वैवाहिके वह्नौ श्रौतं वैतानिकाग्निषु। कर्म्म कुर्य्यात् प्रतिदिनं विधिवत् प्रीतिपूर्व्वतः। सायंसन्ध्यामुपासीत हुत्वाग्निं भृत्यसंयुतः वेताग्निसंग्रहश्चेति संस्काराः षोड़श स्मृताः— Vyāsa I. 15.

Parāśara XII. 29—अग्निकार्य्यात् परिभ्रष्टाः सन्ध्योपासनवर्ज्जिताः। वेदञ्चैवानधीयानाः सर्व्वे ते वृषलाः स्मृताः।

while away from home[1]. Gobhila-smṛti a late work also prescribes the rehabilitation of the sacred fire when a man loses one of his many wives[2]. It is clear from these passages that the practice of Agnihotra was beset with difficulties. It was eminently suited to a settled condition of society in which, assured of royal patronage or popular support, the Brāhmin lived at home and had rarely to leave it for the sake of livelihood. It also required proper training and Vedic learning. Without these the performance of Agnihotra is prohibited by Manu[3]. Since the time of the Buddha Vedic rites and sacrifices were falling more and more into desuetude, and strenuous efforts to revive them were made, as is well-known, by Kumārila. *Parāśara who is placed in the 8th century pictures the Kali age as one in which Agnihotra languishes[4]. But inspite of the decay of Vedic rites and practices there has been even in later times a marked reluctance to give it up altogether. Maskari the commentator on Gautama is unaware of the prohibition. He quotes Jātukarṇi a Smṛtikāra of the third or the fourth century A. C. enjoining its practice[5], and also a lesser known sage Vyāghra[6]. The

[1] V. 13-14 आहिताग्निर्द्विजः कश्चित् प्रवसन् कालचोदितः। देहनाशमनुप्राप्तस्तस्याग्नि-र्वसते गृहे। श्रौताग्निहोत्रसंस्कारः श्रूयतां ऋषिसत्तमाः।

[2] ज्येष्ठा चेद् बहुभार्य्यस्य अतिचारेण गच्छति। पुनराधानमत्रैक इच्छन्ति न तु गौतमः। दाहयित्वाग्निभिर्भार्य्यां सदृशीं पूर्व्वसंस्थितां पात्रैश्चार्थाऽग्निमादध्यात कृतदारोऽविलम्बितः। III. 4-5.

[3] न वै कन्या न युवतिर्नाल्पविद्यो न बालिशः। होता स्यादग्निहोत्रस्य नार्त्तो नासंस्कृतस्तथा। नरके हि पतन्त्येते जुह्वतः स च यस्य तत्। तस्माद्वैतानकुशलो होता स्याद् वेदपारगः। XI. 36-37,

* Cf. Mahābhārata, Vana P. CXLIX. 34, CLXXXVIII. 32-33, CXC. 26; Śānti P. XC. 1-8 अग्निस्त्रेता त्रयी विद्या यज्ञाश्च सहदक्षिणाः। सर्व्व एव प्रमाद्यन्ति यदा राजा प्रमाद्यति। CCXXXVII. 68—दृश्यन्ते न च दृश्यन्ते वेदाः कलियुगेऽखिलाः। उत्सीदन्ते सयज्ञाश्च केवलाधर्म्मपीडिताः।

[4] सीदन्ति चाग्निहोत्राणि गुरुपूजा प्रणश्यति। कुमार्य्यश्च प्रसूयन्ते तस्मिन् कलियुगे सदा॥ I. 31.

[5] अतीतकालं जुहुयादग्नौ विप्राय वाव्ययम्। नष्टेऽग्नौ विधिवद् दद्यात् कृत्वाधानं पुनर्द्विजः।

[6] योऽग्नींस्त्यजति नास्तिक्यात् प्राजापत्यं चरेद्द्विजः अन्यत्र पुनराधानं दानमेवमथैव च।

prohibition of Agnihotra in the Kali age is not universally admitted. At any rate its validity is narrowly restricted. The prohibition of Agnihotra rests on three texts—one of *Nigama* [1] anonymously quoted in Hemādri's Prāyaścitta-Khaṇḍa, p. 90; another of *Vyāsa* [2] quoted in Smṛti-candrikā and Nirṇaya-sindhu and a third of Laugākṣi [3] quoted in Smṛti-candrikā. This last passage distinguishes two kinds of installation of the sacred fire and says that the one kind obtained in Pūrva-yuga (either former yugas which preceded Kali or in the earlier part of the Kali age). But all these texts are qualified by Devala[1], according to whom so long as the authority of the Vedas and the Caste-system are acknowledged both Sannyāsa and Agnihotra are to be practised. Upon a reconciliation of all these texts the conclusion is deduced that the second kind of installation (ardhādhāna) [5] is permissible so long as respect for the Vedas, and the social structure comprising the four Varṇas continue.[6] Mr. Vaidya opines that

[1] Kalivarjya Text—XIII(b).

[2] Kalivarjya Text—X(a) This gives the year 1199 as the date from which Agnihotra was to cease.

[3] अर्द्धाधानं स्मृतं श्रौतस्मार्त्ताग्न्योस्तु पृथक् कृतिः। सर्व्वाधानं तयोरैक्यकृतिः पूर्व्वयुगाश्रया (श्रिता)।

[4] Kalivarjya Text X(b).

[5] The two kinds of installation are thus distinguished : स्मार्त्ताग्निर्द्विधा विभज्यते। एकस्मात्तोऽर्द्धाद्‌ गृहीतेन अग्निना अरणिं प्रतप्य मन्थनद्वारा अग्निमुत्पाद्य श्रौताग्निः क्रियते। एतदर्द्धाधानम्। यत्र तु विभागमन्तरा समग्र एव स्मार्त्ताग्नौ अरणिप्रतापनम्, ततश्च श्रौताग्नि-समुत्पादनम्, तत्र सर्व्वाधानम्। स्मार्त्ताग्निः गृह्यः आवसथ्यः औपासन इत्यनर्थान्तरम्। तस्य आधानकालः—आवसथ्याधानं दारकाले दायादकाले एकेषाम् (पार-गृ-सू—२।२।१२)। भार्य्यादिरग्निर्दायादिर्वा (गौतम-ध-सू—५।७)। कर्म्म स्मार्त्तं विवाहाग्नौ कुर्व्वीत प्रत्यहं गृही। दायकालाहृते वापि श्रौतं वैतानिकाग्निषु। याज्ञ-सं—१।९७।

[6] A different view is taken by Anantadeva in Smṛti-kaustubha: एतच्च सर्व्वाधानपरमिति अर्द्धाधानमित्यादि लौगाक्षिवचनादिति केचित्। तन्न कृतिद्वयस्तुत्यर्थमन्ते पठितस्य विशेषणस्य परिसंख्यात्मकत्वेन कलौ तदुत्तरार्द्धे स्वानिषेधपरत्वकल्पनाया अनुचितत्वात्।

the prohibition of Agnihotra belongs to the period 1000-1200 A.D. and it was due to the greater vogue of the worship of the five deities;[1] He says, further, that "to a *Karmatha* the sacred fire is everything, to a " sannyāsin it is a nuisance." "Śankara acting in tune with the absorbing sentiment of the age which favoured the life of renunciation, preached sannyāsa and deprecated Agnihotra." In the Smṛtyarthasāra in which the long list of Kalivarjyas is first found the prohibition relates to the installation of the Prajāraṇi by Brāhmins for the progeny. Vyāsa to whom the text limiting the period for the practice of Agnihotra to the first four thousand years of Kali is ascribed distinguishes in I. 14-15 two kinds of installation of the sacred fire—*vivāhāgniparigraha* and *tretāgniparigraha*. The term *Tretāparigraha* is explained by some as the adoption of Sannyāsa along with the *Tridaṇḍa* but seeing that Sannyāsa is generally prohibited in the same text, the mention of this special variety once again would be illogical. In the *Dharma-sindhu*, a digest composed in 1790-91, the term is better explained as the adoption of Agnihotra.[2] The term *prajāraṇiparigraha* is explained by Ananta-deva in his Smṛti-kaustubha as the adoption of Agnihotra on the occasion of the Homa in Jātakarma (natal ceremony) which obtains in some branches. It is so explained in the *Kalivarjya-vinirṇaya*.[3] The incident of Agnihotra

अतएव "यावद्वर्णविभागोऽस्ति" इत्यादि देवलवचनं सर्व्वाधान-प्रतिप्रसवार्थमित्यपि निरस्तम्। वर्णविभागाभावे वेदप्रवृत्त्यभावे च अधिकारासम्भवेनास्य वचनस्य न्यायप्राप्तानुवादत्वमित्यपि न शङ्क्यम्। उक्तसंख्योत्तरं व्यासवचनेन निवारितयोः संन्यासाग्निहोत्रयोर्वर्णविभागादिकालेऽप्यप्राप्तयोः प्रतिप्रसवार्थ भवात् मुख्यगौणकालप्रापकत्वेन विरोधपरिहारसंभवाच्चेत्यलम्।

1 पञ्चोपासना।

2 अग्निहोत्रस्वीकारः सर्व्वाधानम्।

3 केषाञ्चिच्छाखानां जातकर्महोमे अरणिपरिग्रहो विहितो यः।—*Cf.* Jābāla. जाते कुमारेऽरणिं मथित्वा तस्मिन्नायुष्यहोमान् जुहोति, तस्मिंश्चूडाकरणोपनयनव्रतादिषु गोदानक्रियास्तस्मिन्नेवैतमुद्वाहयेदतः स शालाग्निः। (cited by Raghunandana—Prāy. Tat., p. 550, Jīv. Edn.) विप्राणां सन्ततिजीवनाय जातारणिपरिग्रहः—*Kalivarjyavinirnaya.*

known as the licking of the agnihotra-ladle and its use as such was also prohibited due to stricter ideas of ceremonial purity which grew up in later times. The *Havanī* was a large ladle into which offerings like milk were put in small quantities from a smaller ladle called *Sruva* before the whole was poured into the fire. After the Agnihotra Homa the ladle was licked and thereafter it was again used in the sacrifice. Sacrificial utensils like the *camasa* did not require cleaning. Thus Āpas. Śr. Sū. XXIV. 13 says that for drinking Soma, the *camasa* does not become unclean.[1]

So also Baudh. Dh. S. I. v. 43-45.[2] That special cleaning of the ladle used in Agnihotra is not needed is elsewhere laid down in the same work (I. vi).[3]

Blowing the Fire with the Mouth

The prohibition of this practice was due to the ascendancy of stricter ideas of ceremonial purity. The sacrificial fire used to be kindled by blowing with the mouth. But it was objected to in early times. Thus Āpas. Dh. S. I. 15-20—Nor shall he blow on fire with his breath.[4] This rule applied to one not clean and initiated, *aprayata*. The commentator Haradatta adds that in the case of one initiated this is not to be blamed.[5] On this point there are contradictory texts: Vāj. Śr. S.: Fire was created from the mouth

1 सोमपानार्थेचमसस्य अशुचित्वाभाव: ।

2 अतैजसानामेवंभूतानामुत्सर्ग: । ... वचनाद यज्ञे चमसपात्राणां ··· न सोमेनोच्छिष्टा भवन्ति इति श्रुति: ।

3 उच्छिष्टलेपोपहतानामवतक्षणम् (28) । तदेतदन्यत्र निर्द्देशात् (30) । यथैतदग्निहोत्रे घर्मोच्छिष्टे दधिघर्मे च कुण्डपायिनामयने .. दर्भैरद्भि: प्रक्षालनम (31) । तेषु ... अग्निहोत्रहवन्यादीनामुच्छिष्ट-समन्वारब्धे लेपोपघाते च । दर्भैरद्भि: प्रक्षालनमेव शौचं नावलेखनादि ।—Govindasvāmin on 30.

4 न चैनमुपधमेत् ।

5 अप्रयत इत्येव एवमग्निमप्रयतो नोपधमेत् । प्रयतस्य न दोष: ।

hence one should kindle it by blowing with the mouth.[1] Gautama IX. 33, on the other hand, forbids it.[2] This conflict of opinions is evident in Manu IV. 53. Haradatta says that in view of the Vājasaneya text the blowing of the Śrauta (sacrificial) fire is permitted but not of the Smārta or domestic fire. And there is also another view that the rule is obsolete, a hollow reed or bellows being fit to be used to avoid saliva falling into the fire. Kātyāyana IX. 14-15 (corr. to Gobhila Smṛti VII. 135-136) shows the conflict of views : While about to offer the oblation or actually pouring it, one must not kindle the fire with the hand (*pāṇi*) or the sacrificial utensil called *vajra* or with a piece of wood but may do so with a fan. Some enjoin kindling with the breath since fire sprang from the mouth, *i.e.*, from uttered mantras and they apply the prohibition to the kindling of domestic fire.[3] This conflict is ended by the Kalivarjya which applies to the kindling of sacrificial fire, ancient texts having prohibited the kindling of domestic fire.

Human Sacrifice

The prevalence of Human sacrifice in Vedic society is almost unanimously denied by Western scholars but indigenous Pandits although concerned to dispute practices such as widow re-marriage and the marriage with the maternal uncle's daughter have not been anxious to challenge that this sacrifice at one time obtained. On the other hand, the injunction for it is pointed out by the Digest-writers such

[1] मुखाद्ध्यग्निरजायत । तस्मान् मुखेनोपसमिन्ध्यादिति । Haradatta quotes an anonymous text (possibly Kātyāyana's). मुखेनोपधमेदग्निं मुखाद्ध्यग्निरजायत ।

[2] अग्निमुखोपधमनम् ... वर्जयेत् ।

[3] होतव्ये च हुते चैव पाणिशूर्पस्फ्यदारुभिः । न कुर्यादग्निधमनं कुर्याद्वा व्यजनादिना । मुखेनैके धमन्त्यग्निं मुखाद्ध्येषो(ह्येषो)ऽजायत । नाग्निं मुखेनेति च यल्लौकिके योजयन्ति तत् ।

as Kamalākara and Anantadeva.[1] And the belief that great merit was gained by its preformance lies behind the relics of it that have come down to modern times.[2] There is also the mention of *Puruṣamedha* in Vedic passages but this is generally taken to have been a symbolical sacrifice. Certain verses (as in the *Puruṣa-sūkta*), however, read as clearly suggestive of the ritual of human sacrifice.[3] The legend of Śunaḥśepha (in Aitareya Brāhmaṇa, VII. 13. 18 and also Kauṣītaki Brāhmaṇa) is a definite piece of evidence for the existence of the sacrifice in ancient times. Hariścandra, an Ikṣāku king, the lord of a hundred wives, yet childless, had at last, under the boon of Varuṇa, an only son Rohita by name. According to his previous vow he was called upon by the deity to sacrifice this only scion. Delaying to do so, he was stricken with dropsy. At last, Rohita persuaded Ajīgarta, a poor Brāhmin, to sell his son Śunaḥśepha for a price to be sacrificed to the god. No man coming forth to immolate him, at last the poor father agreed to do so himself. But Śunaḥśepha by hymning the god had his bonds loosened (whence his name Devarāta) and he was adopted as a son by the sage, Viśvāmitra. The refusal of all people to kill the boy and Viśvāmitra's rejoicing at the

[1] Yajurveda, Ch. XXX, gives a long list of the classes of men prescribed for sacrifice for different purposes. Nirṇayasindhu cites from Kaṇḍikā V—ब्रह्मणे ब्राह्मणम् (आलभेत) and Smṛti-kaustubha from Kaṇḍikā XXII—ते प्राजापत्याः। The ritual is thus described by Mahīdhara under Kaṇḍikā II—ब्राह्मणराजन्ययोरतिष्ठाकामयोः पुरुषमेधसंज्ञको यज्ञो भवति। चैत्रशुक्लदशम्यामारम्भः। अत्र त्रयोविंशतिर्दीक्षा भवन्ति द्वादशोपसदः पञ्च सुत्या इति चत्वारिंशद्दिनैः सिध्यति। अत्र यूपैकादशिनी भवति एकादशाग्नीषोमीयाः पशवो भवन्ति तेषाञ्च प्रतियूपं मध्यमे वा यूपे यथेच्छं नियोजनम्। Under Kaṇḍikā XXII ततः सर्वान् ब्राह्मणादीन् यूपेभ्यो विमुच्योत्सृजति।

[2] Dharmasindhu-Pariccheda II आषाढस्य शुक्लद्वादश्यां वामनपूजनेन नरमेधफलम्।

[3] तं यज्ञं बर्हिषि प्रौक्षन् पुरुषं जातमग्रतः देवा यद् यज्ञं तन्वाना अबध्नन् पुरुषं पशुम्।—Ṛg veda X 90.

failure of the sacrifice suggest that this form of sacrifice was no longer common.[1] Naramedha must have fallen into disuse at a very early date and hence the early Smṛti-sūtras and Saṃhitās did not think it necessary to treat it as one of the current yet reprehensible practices calling for express prohibition. The prohibition occurs in Brahmapurāṇa, Garuḍapurāṇa and Bṛhannāradīya-purāṇa. This prohibition was perhaps felt to be necessary as a warning or protest against the revival of human sacrifice as a Tāntrika or Kāpālika rite. King Yaśovarman visited Bindhyavāsinī to whom human sacrifices were still offered

The Horse Sacrifice and the Royal Sacrifice : Aśvamedha and Rājasūya.

Historical evidence of the celebration of Aśvamedha is obtained down to about the end of the first millennium of the Christian era. In Śat. Br. XIII. 5. 4 * a list is found of the performers of this sacrifice, Indrota, Daivāpa, Śaunaka (Janamejaya-Parīkṣit), etc., down to Śatānīka-Śatarātra and the list agrees more or less with that of the performers of the Royal sacrifice.† Puṣyamitra in the 2nd century B.C., is known to have performed it under the direction of Patañjali [2]. The practice continued in the first six centuries of the Christian era, and to the time of Harṣavardhana and even later. The Cālukyas, according

[1] Thus Mahābhārata—Sabhāparva, Ch. XXII, Śl. 11—मनुष्याणां समालम्भो न च दृष्टः कदाचन। स कथं मानुषैर्देवं यष्टुमिच्छसि शङ्करम्। But in Āśvamedhikaparva, Ch. III, Śl. 8—its performance is advised. राजसूयाश्वमेधौ च सर्व्वमेधञ्च भारत। नरमेधञ्च नृपते त्वमाहर युधिष्ठिर।

* Also in Śāṅkhāyana Śrauta Sūtra XVI. 9.

† In Aitareya Brāhmaṇa VIII. 21-23.

[2] वर्तमाने लट्। इह पुष्यमित्रं याजयामः—Mahābhāṣya iii. ii. 123.
V. Smith—Early History, p. 304.

to an inscription of Kīrtivarman, dated 578 A.C., were devout followers of Vedic rites and performed many sacrifices including the Aśvamedha.[1] In a stone-pillar inscription of Skandagupta, Samudragupta (middle of 4th Cent., A.C.) is described as the reviver of Aśvamedha then long in abeyance during the Buddhist Kushan rule.[2] Indra-viṣṇu a Brahmin king is stated to have performed several *Kratus* or sacrifices.[3] Pravara Sena II is described as the daughter's son of Mahārāja Bhavanāga in a line of "*bathers after ten Aśvamedhas.*"[4]

Kumāra Gupta I, a son of Vikramāditya and King in 413, performed it (Smith, p. 316). It seems that the horse-sacrifice was revived under the Gupta Kings although bloody animal-slaughter was on the wane under the influence of Buddhism and the Paurāṇik religions of a later date. The Karkaṭaka dynasty of Kashmir is said never to have performed Aśvamedha.[5] Pulakeśin the First (d. 567 A. C.) is known to have performed the horse-sacrifice.[6] Lalitāditya (according to Chāchanāmā) conquered the different quarters of the globe (including Baluchistan and Turkestan) about 712 A.D. like Samudragupta but refrained from it. Among the Pallavas of Kāncī who were orthodox followers of the Vedic religion, this practice was found, as in the case of Śivaskandavarman.

[1] Badami Cave Inscription—Indian Antiquary, Vol. VI, p. 363.

[2] Corp. Ins., Vol. III, No. 12 : चिरोत्सन्नाश्वमेधस्याहर्त्ता । Also proved by coins struck on the occasion and the stone-figure of a horse found in Oudh and now in the Lucknow Museum.

[3] Corp. Ins., Vol. III, No. 36.

[4] दशाश्वमेधावभृथस्नातानां··· · महाराजश्रीभवनागदौहित्रः ।

[5] Vaidya—Medieval India.

[6] Smith—Early History of India, p. 441. Ādityasena of later Gupta Dynasty (642) performed it, *Ibid.*, p. 332.

Among the Varmans of Kanauj who rose to prominence in the 7th and 8th centuries, adherence to the Vedic religion was marked. The conquests of Yaśovarman, their greatest King, are described by Vākpatirāja (in Gauḍavaha) as having extended down to the Malaya coast and even against the Pārasīkas although he was defeated finally by the Cālukyas. According to C. V. Vaidya, the first set of Hindu kingdoms in medieval India (600-800 A.C.) signalised the assumption of royal power by the performance of the Aśvamedha but not so the second set (800-1000 A.C.).[1] He opines that by 700 A.C. aversion to animal sacrifice reasserted itself and Vedic animal sacrifices died out finally. In the 9th century India was totally changed. Buddhism had, no doubt, disappeared except from isolated places like Magadha. But Vedic Aryanism also was no more. According to Todd horse-worship and Aśvamedha among the Rajputs prove their Scythian origin.[2] By the close of the tenth century the Rajputs began to assume their place in the political arena of India. The Rajputs, according to Mr. Ishwariprasad, idealised chivalry which led to fierce wars among themselves. The numerous Rajput princes hopelessly blinded by petty jealousies failed to visualise the future that lay in store for them. It is reasonable to conclude that the prohibition of Aśvamedha and Rājasūya in the Kali age was felt to be a necessity in these conditions. Rājā Jaycānd, the contemporary and rival of Pṛthvīrāj, is said to have celebrated Aśvamedha[3]

[1] Vaidya—Medieval India.

[2] Rajasthan, Vol. I, Ch. VI.

[3] "Jeysing, the founder of Amber, it is said, intended to get up the ceremony of the *ashvamedha jugga* or sacrifice of the horse —a rite which..... had entailed destruction upon all who had attempted it, from the days of Janamejaya the Pandu to Jeichund, the last Rajput monarch of Canauj"—Rajasthan, Vol. II, p. 1220. Jeysing's date—1st half of 18th century.

and, according to tradition, Śivāji in later times had the advice of Gāgābhaṭṭa to perform the long-disused triumphal rite.[1]

The performance of these two sacrifices is enjoined in the Vedas not merely in the case of princes. It was prescribed as an expiation for the slaying of a Brahmin (Gautama XIX).[2]

Some of the later Smṛtis also repeat the injunction of the sacrifice, such as Parāśara, XII.64 and Śaṅkhalikhita (cited in Vīr. Mit.—Rājanīti, p. 252) in the case of a Sārvabhauma king.[3]

That the Aśvamedha was a sacrifice difficult of performance was realised in Vedic times. The conditions for the performance of the horse-sacrifice were difficult of fulfilment as realised in early Vedic times. Āpas. Gṛ. S. XXI. 1 : A Sārvabhauma (*i.e.*, a king of all the land) may perform the Aśvamedha Also one not so (अपि वा असार्वभौमः). This addition is regarded by Keith as made by a later hand (*cf.* Baudh. XV.1 : A king victorious and of all the land should sacrifice). Warning is given in Tait. Br. iii. 8, 9. 4 : He is poured aside who being weak offers the Aśvamedha (Keith's Introd. to Black Yajurveda, p. 132). It is spoken of as an *utsannayajña*. Śat. Br. XIII. 3. 3. 6 : Aśvamedha is indeed as it were a disused sacrifice, for what is performed thereof and what is not? Tait. Saṃ. V. 4. 12. 3 : Aśvamedha is indeed a disused sacrifice, for, say they, who knows if the whole of it is performed or not? Eggeling (S. B. E. XLIV, p. 334) has a note :

[1] *Cf.* Matsya-purāṇa, Ch. CXLIV, śl. 83—यजन्ति ह्यश्वमेधैस्तु राजानः शूद्रयोनयः ।

[2] व्रात्यस्तोमेनेष्ट्वा तरति सर्व्वं पाप्मानं तरति ब्रह्महत्यां योऽश्वमेधेन यजते ।

[3] Parāśara—यजेत वाश्वमेधेन राजा तु पृथिवीपतिः । पुनः प्रत्यागतो वेश्म वासार्थमुपसर्पति ॥ Likhita—एष्टव्या बहवः पुत्रा यद्यप्येको गयां व्रजेत् । यजेत वाश्वमेधेन नीलं वा वृषमुत्सृजेत् ॥

"Perhaps, however, *Utsannayajña* rather means a decayed sacrifice, *i.e.*, one which has lost (or in the usual performance is apt to lose) some of its original elements, whence the *Saṃskṛti* tune is to be used for the purpose of making up the lost parts."[1]

The prohibition of these two sacrifices rests on texts from Brahmapurāṇa, Garuḍa purāṇa; and Bṛhan-nāradiya-purāṇa.

Cow-sacrifice

The prohibition of cow-killing is under these heads:—

(*a*) The cow-sacrifice—**गोमवः, गोमेधः, यज्ञे गोवधः ।**

(*b*) The killing of the cow by the Brāhmin in the sacrifice—**गोसवे गोसंज्ञप्तिः ।**

(*c*) The sacrifice of cows in honour of the bride-groom, the guest, the manes or *pitṛs* or the king **वरातिथि-पितृभ्यः पशूपाकरणक्रिया ।**

(*d*) The killing of the sacrificial animal by the priest is also prohibited—**शामित्रम् ।**

The extent to which and the forms in which animal sacrifice (*Paśu-yāga*) prevailed in Vedic times need not be detailed here. The three main divisions of sacrifices were Iṣṭi, Paśu and Soma. The extensiveness of Paśu-yāga led by a revulsion of feeling to the Buddha's teachings of *ahiṃsā* and as a result to a shrinkage of Vedic usages altogether. Cow-sacrifice is prescribed in the Vedas.[2] Akin to *Gosava* or *Gomedha*[3] is *Gosavā* the name of

[1] The expression *utsannayajña* is otherwise interpreted—"Or as the Saṃhitā has it—essentially like the fire-offering an *utsanna-yajña*—a sacrifice of great extent and elaboration" (Keith's Introduction to the Black Yajurveda, p. 132).

[2] मैत्रावरुणीं गां वशामालभेत । *cf.* V. S. 24. 8 ; M S. 3. 13. 9 ; 170. 7 ; V.S. 28. 33.

[3] Ṛgveda VII. 25. 8.

an *ekāha* (one-day) sacrifice.[1] *Gosatra* occurs in Tait. Saṃ. VIII. V. 1. 1. According to Gobhila-Gṛhya-sūtra III. vi. x, Gosavā was 'a sacrifice by which a thriving condition for cows is obtained' (Max Müller). There was also a *Smārta-yāga* called *Śūla-gava*.[2] Hiran. Gṛ. Sūtra II. 3. 8. 1 runs thus :—

Now (follows) the sacrifice of the śūla-gava (or spit-ox for propitiating Rudra and averting plague in cattle).

The killing of cows was also a part of other functions as honorific offerings to a Brahmin, a King or a guest.[3] Sāṅkh. Gṛ. S. II. 15 (2) : Let the *arghya* not be without flesh. (3) On the occasion of a sacrifice and of a wedding let (the guest say) make it (ready). (4) The animal offered to the teacher is sacred to Agni. (5) If offered to an officiating priest, to *Bṛhaspati*. (6) If to the father-in-law, to Prajāpati. (7) If to a King, to Indra. (8) If to a friend, to Mitra. (9) If to a Snataka, to Indra and Agni. (10) Even if he performs more than one *Soma*-sacrifice during a year, let only priests who have received (from him) the *arghya*-reception officiate for him, not such who have not received. Sāṅkh. Gṛ. S. I. 12. 10 : At the wedding one cow when the *arghya* ceremony has been performed ; in the house one time ; these are the two *Madhuparka* cows. There were thus two occasions in connection with wedding—on reception of the bride-groom and on arrival of the newly-married couple at their own house—this being offered by the Ācārya.

[1] Tait. Br. ii.

[2] Pār. Gṛ. S. III. viii ; Kāt. Śr. S.—Vidyādhara Śāstri's note :

"अथ शूलगवः" इत्यादिना विहितो गोद्रव्यकः कर्मविशेषः, अस्यापि कलौ निषिद्धत्वात् अननुष्ठानमेव, शाखान्तरीयाणाम् "ईशानाय स्थालीपाकं श्रपयित्वा" (आ.प. गृ.सू. ९.२२) इति गोः स्थाने स्थालीपाकविधानादनुष्ठानम्।

[3] Vaś. IV—अथापि ब्राह्मणाय राजन्याय वा अभ्यागताय वा महोक्षं वा महाजं वा पचेदेवमस्यातिथ्यं कुर्यात्।

Oldenberg has a note on Sāṅkh Gṛ. S. II. 15. 2 and 3—two verses "which seem to contradict each other. Perhaps it is not necessary except in the cases of a sacrifice and of a wedding to kill a cow but in any case, even if the cow offered to the guest be declined by him, the host should take care that some flesh be served at that meal."

Nārāyaṇa on Āśvalāyana Gṛ. S. I. 24. 33 says that "in case of slaying, the feast is to be on its meat, in case of letting off, on some other.[1]" Similarly, Buddhists distinguish between eating flesh and eating flesh of animal killed expressly to entertain a guest. (S.B.E.)

Hiraṇ. Gṛ. S. I. 4. 13 describes the procedure thus:

10. Then he utters to him the announcement "The cow." 11. That (cow) is either killed or let loose. Even in the present-day weddings the barber cries out, "The cow," "The cow."

Aś. Gṛ. S. I. 24. 23: When he has sipped water they announce to him 'The cow.'

24. Having murmured, "Destroyed is my sin, my sin is destroyed," he says "Om, do it," if he chooses to have her killed.

Aṣṭakā was a *Śrāddha* performed on the four Aṣṭamī Tithis of the dark fortnights in Hemanta and Śiśira as required by Pāras. Gṛ. S. III. iii.[2] and it had to be per-

[1] पशूपाकरणपक्षे तन्मांसेन भोजनम्, उत्सर्जनपक्षे मांसेतरेण ।

[2] ऊर्ध्वमाग्रहायण्यास्तिस्रोऽष्टकाः । Acc. to Mit. there are four such days and acc. to Raghunandana three—in Agrahāyaṇa, Māgha and in Phālguna. Aparārka on Yāj. I. 146 cites Paiṭhīnasi—पौषप्रभृतयः कृष्णपक्षास्तिस्रोऽष्टकाः, मार्गशीर्षप्रभृतय इत्येके । and Śaunaka हेमन्तशिशिरयोश्चतुर्णामपरपक्षाणां अष्टमीष्वष्टकाः । Viśvanātha's bhāṣya—विद्यमानत्वेऽपि चतुर्थ्यास्तिसृषु कृष्णपक्षेषु क्रमेणानुष्ठीयमानत्वात्तिस्र इत्युक्तम् । यद्वा स्वतन्त्रेच्छस्य नियोगपर्यनुयोगानर्हत्वात्तिस्र इत्युक्तिः ।

formed with offerings of cakes, beef, green vegetables to Indra, Viśva-deva, Prajāpati and the Pitṛs (Manes). It was obligatory on the Agni-hotrin according to Āś. Gṛ. S. II. iv. 11.[1] Directions for the Aṣṭakā *Śrāddha* with the cow are given in Gobh. Gṛ. S. III. 10 and for the Anvaṣṭakā in IV. 1 and IV. 4 (*vide* Viṣṇu, XLVII)[2].

In Khādira Gṛ. S. III. 4 they are thus given: (5) On the middle (Aṣṭakā) a cow (is sacrificed). (6) Going in a northern direction (from the Fire) he should kill (the cow), the head of which is turned to the West, the feet to the North. (13) He should sacrifice with (the formula): to the Aṣṭakā svāhā. (14) The *abadānas* (portions cut off) he should have taken from all its limbs, (15) not from the left thigh and the lungs (16) The left thigh he keeps for the Anvaṣṭakā. (17) He should cook the *abadāna* and the mess of sacrificial food (stirring up the one and the other) with two different pot ladles. (18) The juice he lets drop into a brazen vessel. (19) The *abadānas* he cooks on branches of the *plakṣa* tree (20) From each (*abadāna*) he should cut off (prescribed portions and put them) into a brazen vessel. (21) And from the mess of cooked food (22) let him take four portions or eight portions of Ājya and let him sacrifice it with "into Agni" (M. B. II ii. ix). (23) let him make oblations out of the brazen vessels, each oblation with two of the following: (24) The oblation to (Agni) Sviṣṭa-kṛt with the eighth verse. (25) At a sacrifice to the fathers the omentum (bapā) is sacrificed with "carry the omentum" (M.B.II. 3. 16). (26) At one to the Gods with Jāta-vedas. (27) If (the deity is unknown) assigning that. (28) As "to the Aṣṭakā." (29) An animal is the

[1] अथ शीभूतेऽष्टकाः पशुना स्थालीपाकेन च अप्यनड्वहो यवसमाहरेत् अग्निना वा कक्षमुपोषेत् एषा मेऽष्टकेति, न त्वेवानष्टकः स्यात्।

[2] अष्टकासु दैवपूर्व्वं शाकमांसापूपैः श्राद्धं कृत्वा त्वन्वष्टकास्वष्टकावत् षष्ठे दैवपूर्व्वमेव हुत्वा etc.

sacrificial fee at (the sacrifice of an animal). (30) A full vessel at (that of a mess of cooked food). Compare Pār, Gṛ. S. III. 3 on Śrāddha with meat. Āp. Dh. S. II. vii. xvi: (25) Beef satisfies the manes for a year. (26) Buffalo's (meat) for a longer time than that. (27) By this permission of the use of buffalo's meat, it has been declared that the meat (of another) tamed and wild animal is also fit for offerings. Vidyādhara Śarmā in his edition of Kātyāyana Śrauta Sūtra says: In the Kāṇva and Mādhyandina branches the rite has disappeared with the prohibition of beef. In other branches it is still obligatory since no meat is prescribed in them.[1]

The cow was called *Ātithya* which Śat. Br. III. iv. 1-2 thus explains: Now as to why it is called guest-offering. He, the purchased Soma, truly comes as his (the sacrificer's) guest; to him (if offered) that (hospitable reception), even as for a King or a Brāhmaṇa one would cook a large ox or a large he goat—for that is human (fare offered to a guest) and the oblation is that of the Gods; so he prepares for him that guest-offering.

But the slaying of the cow was optional; it rested on the pleasure of the guest. Thus Pār. Gṛ. S. I. iii. 26-31: When (the guest) has sipped water (the host) holding a butcher's knife says to him three times, "A cow." He replies: "The mother of the Rudras, the daughter of the Vasus, the sister of the Ādityas, the navel of immortality." To the people who understand me I say, "Do not kill the guiltless cow which is Aditi."[2] I kill my sin and N.N.'s. sin. Thus if he chooses to have it killed. But if he

[1] साग्निकस्य अवश्यकर्त्तव्यता-बोधनेऽपि तत्र गोमांसस्य द्रव्यत्वेन विधानात् लोप एव। अस्मच्छाखीयानान्तु येषां मांसस्य न विधानम् तेषां नित्यतयानुष्ठानम्।

[2] प्र नु वोचं चिकितुषे जनाय मागामनागामदितिं वधिष्ट। मम चामुष्य च पाप्मानं हनोमीति यद्यालभेत। यद्युत्सृजेन्मम चामुष्य च पाप्मा हत ओमुत्सृजत तृणान्यत्त्विति ब्रूयात्। न त्वेवामांसोऽर्घः स्यात्।

chooses to let it loose, he should say, "My sin and N.N.'s sin has been killed. Om : Let it loose : Let it eat grass." But let the *arghya* not be without flesh. On the occasion of a sacrifice and of a wedding let (the guest) say, 'Make it (ready)'. Even if he performs more than one Soma sacrifice during one year, let only priests who have received from him the *arghya*-reception officiate for him, not such who have not received it, for this has been prescribed in the Śruti. (Āp. Gṛ. S. I. v. 13-17).

Āp. Gṛ. S. I. iii. 9-17 reviews the occasions for cow-killing ; (9) These are the occasions for killing a cow, (the arrival of) a guest, (the Aṣṭakā sacrifice offered to) the fathers, and marriage. Likewise Āp. Dh. S. in 2. 4. 8. 7 ; A cow and the *madhuparka* (shall be offered) to the teacher, to an officiating priest,[1] to the father-in-law and to a King, if they come after a year has elapsed.

Doubts arose as to whether such meat-offering was fit to be eaten[2] and it is declared in Āp. Dh. S. I. v. 17. 30. (But the meat of milch-cows and oxen may be eaten. (31) The Vājasaneyaka declares 'Bull's flesh is fit for offerings'. That such doubts were expressed even in the earliest times is shown by Śat. Br. III. i. 2. 21 : Let him (the consecrated) not eat of either the cow or the ox, for the cow and the ox support everything here on earth. They (the Gods) bestowed on the cow and the ox whatever vigour belongs to other species (of animals) and therefore the cow and the ox eat most. Hence, were one to eat of an ox or a cow, there would be as it were un-eating of every thing or as it were a going on to the end (or to destruction). Such a one would be likely to be born again as a strange being (as

[1] Śaunaka cited by Aparārka :

ऋत्विजो हत्वा मधुपर्कमाहरेत् स्नातकायोपस्थिताय राज्ञे चाचार्यश्वशुरपितृव्यमातुलानां च ।

[2] In Ṛgveda the cow is called *aghnyā*—not to be slain—16 times. —Vedic Index.

one of whom there is) evil report such as 'he has expelled an embryo from a woman,' 'he has committed a sin'; let him therefore not eat (the flesh) of the cow and the ox. Nevertheless Yājñavalkya said—'I for one eat it, provided that it is tender.'

But the ancient tradition lost its force by slow degrees. In the earliest Dharma-sūtras we find repeated the various views given in the Vedic texts quoted above. For the sin of expulsion of an embryo, *Baudhāyana* prescribes the expiation of *Gosava*, *Aśvamedha* or *Agniṣṭut* (II. 1). In II. iii. 63-64 he mentions the occasions for cow-sacrifice. *Gautama* 17.28[1] mentions the cow and the ox as forbidden meat. *Āpastamba* I. 26. 1 prescribes a penance for cow-killing.

Vaśiṣṭha XI[2] prescribes the performance of *Śrāddha* with meat. While subscribing to the cult of non-injury, he makes an exception in the case of sacrifice.

A tendency is thus evident to restrict animal sacrifice and meat-eating to the Śāstraic prescriptions. It is difficult to deny that this was due to the re-action against animal slaughter noticeable after the time of the Buddha, and to the wave of Ahiṃsā or cult of non-injury that Buddhism created. The position of Manu is in accord with that of the writers of the Dharma-sūtras just mentioned. He also recites the occasions for animal slaughter[3] and while stressing the virtue of non-injury puts forth a strong plea in

[1] ऋषविन्नृपवरमातुलश्वशुरर्त्विजः । एतेऽर्घ्याः शास्त्रविहिताः स्मृताः कालविभागशः । ऋषिविद्वन्नृपाः प्राप्ताः क्रियारम्भे वरर्त्विजौ । मातुलश्वशुरौ पूज्यौ संवत्सरगतागतौ । 63-64.

[2] भक्ष्यत्वसमुच्चयार्थश्चकारः, तस्मिन् भक्ष्यत्वपक्षे तयोरेव ग्रहणं यथा स्यान्न वत्सादीनामपि इत्येवमर्थं उपदेशः.—मस्करभाष्यम् । Vaśiṣṭha is quoted in support—भक्ष्यौ तु धेन्वनडुहौ मेध्यौ वाजसनेयके विज्ञायेते । तत्रातिथिरूपेणागतस्य धेन्वनडुहौ भक्ष्यौ इतरेषामभक्ष्यौ । वशिष्ठलिङ्गाद् यथा—पितृदेवातिथिपूजायामप्येवं पशून् हिंस्यादिति मानवमपि ।

[3] V. 41—मधुपर्के च यज्ञे च पितृदैवतकर्मणि । अत्रैव पशवो हिंस्याः नान्यथेत्यब्रवीन् मनुः । Also III. 119, 120, 123.

favour of sacrifices ordained in the sacred texts.[1] Amongst the kinds of meat meant for *Śrāddha*, *Manu* omits beef and instead prescribes milk-preparations.[2] In him, therefore, there is a see-saw between the higher ideal of non-injury and respect for the letter of the Vedas. The scale turns a little more towards the former in *Viṣṇu*. He regards the killing of the cow as a minor sin and prescribes penalties for it in the shape of Cāndrāyaṇa or Parāka or Gomedha or Govrata (L. 24). Chapter LI ends with a long discourse on non-injury repeating some of Manu's verses. The cultus of the cow is developed in Chapter XXIII which sets forth the many virtues of the cow but he retains the old tradition still (LXXIV-1 and LXXX-2). *Yājñavalkya* is opposed to meat-eating on other than occasions prescribed.[3] He also adheres to the old usages and like Manu omits beef from the kinds of meat fit for Śrāddha. *Kātyayana's* ritualistic Saṃhitā (printed as Gobhila in the Ānandāśrama series) prescribes the performance of Śrāddha without meat,[4] which seems to have become the rule about his time. Śātātapakarma-vipāka, Chapter II, details penances for cow-killing. This topic is dealt with at increasing length in the Smṛti works henceforth. *Kāśyapa* on penances for cow-killing is quoted by Viśva-rūpa on Jājñavalkya III-263 and also by Maskari on Gautama (22.18). He also quotes

[1] यो बन्धनवधक्लेशान् प्राणिनां न चिकीर्षति। स सर्वस्य हितप्रेप्सुः सुखमत्यन्तमश्नुते। V. 46. Also V. 42-44.

[2] संवत्सरन्तु गव्येन पयसा पायसेन तु। III. 271. Medhātithi on III. 123—(meat-śrāddha) अयञ्च मुख्यः कल्पस्तदभावे दधिघृतपयोऽपूपादि विधायिष्यते।

[3] प्राणात्यये तथा श्राद्धे प्रोक्षित द्विजकाम्यया। देवान् पितॄन् समभ्यर्च्य खादन् मांसं न दोषभाक्।—I. 179. महोक्षं वा महाजं वा श्रोत्रियायोपकल्पयेत्।—I. 109.

[4] I. 18. वसिष्ठोक्तो विधिः कृत्स्नो द्रष्टव्योऽत्र निरामिषः। XVII. 25—स्थालीपाकं पशुस्थाने कुर्याद् यद्यनुकल्पितम्। श्रपयेत् तं सवत्सायास्तरुण्या गोः पयस्यनु।

verses and a prose passage from Bṛhaspati.[1] Hemādri Prāyaścitta Khaṇḍa pages 80-96 gives extracts from Purāṇas mostly of a late date on the same topic.[2] With the reaction against bloody animal sacrifices necessarily came a feeling of disgust towards the function called *go-saṃgnapana* that is the killing of the cow by suffocation which used to be performed by a Brahmin.

Śāmitra (शामित्र) was merely one of the functions of the priest slayer—the Śamitā. Āś. Gṛ. S. I. 11 : (1). Now (follows) the ritual of the animal sacrifice. (10) To the west of the Śāmitra (fire) he (the Śāmitṛ) kills (the animal), the head of which is turned to the East or the West, the feet to the North; and having placed a grass blade on his side of the (animal's) navel, (the performer) draws out the omentum, cuts off the omentum, seizes it with the two Agni-sprāṇis, sprinkles with water, warms it at the Śāmitra (fire), takes it before that fire, roasts it, being seated to the South, goes round (the two fires) and sacrifices it. In the Jaimini Sūtra as also in Śabara-bhāṣya and in the Tantravārtika, the place of the Śamitā among the priests officiating at a sacrifice is discussed (III. vii. 28-29).

The use of Surā or Spirituous Liquor

The prohibition of drinking forms two topics in the Kalivarjya texts :—(1) the restriction of drinking in course of the sacrifice called Sautrāmaṇī—सौत्रामण्यामपि सुराग्रहणस्य

[1] बृहस्पतिना तु "द्वादशाहेन गोघाती तस्मात् पापात् प्रमुच्यते। क्षीराहारो भवेत्तत्र क्षीरदध्याशनोऽपि वा। द्वादशरात्रं पञ्चगव्याहारः षड्रात्रं वा यावकाहारो गोष्ठे वसेत् ब्राह्मणान् भोजयित्वा शुध्येदित्याह बृहस्पतिः।

[2] गोसव एव कारणं हनने मधुपर्कश्च तयोरभावात् गोहिंसनं गर्हितमेव कलियुगे।

On the sacredness of the cow he cites Mārkaṇḍeya Purāṇa—
सर्व्वेषामेव वर्णानां ब्राह्मणः परमो गुरुः। तथा च पशुजन्तूनां गौर्मातेति प्रगीयते। विप्रहत्या च गोहत्या सममेतद्द्वयं नृणाम्॥

च संग्रह: (2) the ban on spirituous liquor in general—on सुरा, मद्य or मधु.

No injunction in the Hindu sacred law is more insistent than that for abstinence from spirituous drink, and it dates from the remotest period. *Surā* is spoken of in Vedic literature with approval in some places[1] and with disapproval in others.[2] It is contrasted with Soma and seems to have been the drink of ordinary life.[3] *Śat. Br.* XII. 7. 3. 8 : There are both milk and *surā*—liquor ; for milk is *Soma* and the *surā* liquor-food ; through the milk he secures the *Soma*-drink and through the *surā* liquor-food. And milk is the nobility (chieftaincy) and *surā* (liquor) the peasantry (clan) ; the milk he purifies after purifying the *surā*-liquor ; he thus produces the nobility from out of the peasantry, for the nobility is produced from out of the peasantry.

Surā was the drink of men in assembly or Sabhā and caused broils.[4] It is regarded as an evil thing, and classed with meat and dicing.[5] In *Śat. Br.* 1.6.3.4 there is a fanciful explanation of the stammering speech of the drunken. From the one which was spirit-drinking further a sparrow sprang ; whence the latter talks as if stammering, for he, who has drunk spirits, talks as if he stammers.

It had its place, however, in the animal sacrifice called Sautrāmaṇī. This sacrifice was so-called from its deity Sutrāmā (Indra). It was of three types—obligatory (*nitya*), optional (*kāmya*) and occasional (*naimittika*). When

[1] Ṛgveda I. 116.7 ; Atharvaveda XIV. 34.6 ; X. 6. 5 ; Śat. Brāhmaṇa XII. 7. 3. 8.

[2] Ṛgveda VIII. 2. 12 ; VIII. 21. 14 ; Maitr. saṃ. I. 11. 6 ; II. 4. 2 ; IV. 2. 1.

[3] Tait. saṃ. I. iii. 3. 2.

[4] Ṛgveda VIII. ii. 12 ; xxi. 14. Kāth. saṃ. XIV. 6 ; Śat. Brāh. I. vi. 3. 4 ; Mait. saṃ. II. iv. 2.

[5] Ath. veda VI. 70. 1 ; Ath. veda XIV. 1. 35-36 ; XV. ix. 1-2.

obligatory, it was included in *haviryajña* (Gautama and Dhūrta-svāmin in his commentary on *Āpas. Śr. S.*); performed for prosperity it was optional. If done for purification upon vomiting *soma*, it was occasional. The Brahmin alone was competent to perform it. The animals proper for sacrifice in the three types are respectively the goat, the sheep and the bull (Āp. Śr. S. Prapā. 19). And the respective deities are the two Asvins, Sarasvatī and Indra. There was another type called Kaukila-Sautrāmaṇi which was performed with five animals. For this milk-cups as well as liquor-cups were prescribed.[1] The former kind of offerings might also serve the purpose, says Āp. Śr. S. XVI. 2. 23. The *surā* or malted rice was bought from the Soma-seller in the Sautrāmaṇī sacrifice. Śat. Br. XII. 7. 2. 12. Let him rather buy them from a vendor of Soma for the Sautrāmaṇī is Soma. In XII. 8. 1. 5: For unpropitious as it were to a Brahmin is that drink—the surā-liquor.[2] The purpose of the rite (Sautrāmaṇī) has been conjectured by Hillebrandt to be the taking over from an un-Brāhmaṇical and therefore though Aryan yet barbarous race of the Surā-drinking and the modelling of it on the analogy of a four-day Soma sacrifice and he thinks that *surā* was once a drink akin to Madhu and connected with the Aśvins. This is ingenious, says Dr. Keith (Introduction to Black Yajurveda, p. 122) but not very probable. And the view of Bloomfield is that the rite is a deliberate copy of a mystic process—the healing of Indra by the Aśvins after excessive *soma*-drinking.

The round of ceremonies spread over two years that made up Rājasūya concluded with Sautrāmaṇi.—an *Iṣṭi*—the object of which was to expiate for any excess that might

[1] The Caraka-sautrāmaṇi pertains to Rājasūya. The Kaukila was meant for those desiring Heaven.

[2] Truly the soma-juice is the Brāhmin's food—Śat. Br. XII. vii. 2. 1.

have been committed in consuming *Soma*-liquor. Thus Śat. Br. VI. 1. 5. 8 says—the *Soma* is truth, prosperity, light; and the *Surā* is untruth, misery, darkness. The *neṣṭṛ* taking the cups of Surā steps out by the back door. He walks round by the back of the hall and placing one (of the cups) in the Vaiśya's, or Rājanya's hand, he says "With this I buy him of thee." Elsewhere (XII. 8 1. 6) we have: "Other Adhvaryus hire some Rājanya or Vaiśya with the wine that he shall drink that (liquor) but let him not do this; for indeed the Soma-drink falls to the share of the fathers and grand-fathers of whoever drinks the liquor on this occasion." Here is the germ of the principle that it was no reproach to the Kṣatriyas and Vaiśyas to drink although it was so to a Brahmin "Verily from this sacrifice (that is Sautrāmaṇī) the man is born and whatever food a man consumes in this world, that (food) in return consumes him in yonder world. Now this sacrifice is performed by means of spirituous liquor (*Parisrut*) and spirituous liquor is not to be consumed by a Brāhmaṇa; he thus is born from that which is not (to be) consumed; and the food does not in return consume him in yonder world. Therefore this (sacrifice), the Sautrāmaṇī, is a Brāhmaṇa's sacrifice. (Note): Therefore to a man of another caste the spirituous liquor would not be *ānādya* but consumable and hence it would consume him in the other world." (Śat. Br. XII. 9. 1. 1).[1] As already pointed out, according to Āpastamba-Śrauta Sūtra, the use of *surā* in Sautrāmaṇī Yāga was optional.[2] But in Vājapeya it was not so. Āś. Gṛ. S. prescribes the use of *surā* in this context.[3]

[1] Oldenberg considers that the surā was never anything but a popular drink which was turned to sacred uses by the priests (Keith —Intr. to Black Yajurveda, p. 122).

[2] पयोग्रहा: वा स्यु: । XIX. ii. 10.

[3] स्त्रोभ्यश्च सुरानाचमम् In the context भरेद्यरन्वष्टक्यम् । Nirṇayasindhu.

The use of *surā* by Brahmins was forbidden at a very ancient date. Thus Kāṭhaka Saṃhitā XII. 12 prohibits the drinking of *surā*.[1] *Gautama* II. 12 repeats the same prohibition.[2] His Sūtra, as quoted by Haradatta, adds a rider that it is prohibited also in the case of Brahmacārins of the Kṣatriya and Vaiśya castes.[3] In Ch. XXIV a penance is prescribed for violation of this rule.[4] *Baudhāyana* II. 1 et seq. lays down the penance as the scorching of the body with hot liquor. For drinking without knowledge (*amatyā*) there is another penance followed by re-initiation. And a śloka is cited to the effect that in such cases men of the three re-generate castes equally require fresh initiation.[5] Drinking from a wine-vessel also calls for penance.

In *Āpastamba* the same rules are repeated. Every kind of spirituous liquor is forbidden. Entering into fire is a further penance prescribed.[6]

Vasiṣṭha in Chapter XX has the same provisions.[7] He prescribes the drinking of scorching wine in the case of repeated or habitual indulgence. According to Mitākṣharā on Yāj. III. 253 this applies to spirits other than *surā*.

Manu recites the rules found in his predecessors in XI. 94-95.[8] In 94 he declares *surā* to be the excrement of

1 तस्माद् ब्राह्मण: सुरां न पिबति ।

2 मद्यं नित्यं ब्राह्मण: ।

3 मद्य नित्यं ब्राह्मणस्य क्षत्रियवैश्ययोस्तु ब्रह्मचारिणो. ।

4 सुरापस्य ब्राह्मणस्योष्णामासिञ्चेयु. सुरामास्ये, मृत: शुध्येदमत्या पाने पयोघृतमुदकं वायुं प्रतित्र्यहं तप्तानि स कृच्छ्र: ततोऽस्य संस्कार: ।

5 अमत्या वारुणीं पीत्वा...ब्राह्मण: क्षत्रियो वैश्य: पुन. संस्कारमर्हति ।

6 सर्व्वं मद्यमपेयम् । (I. 17. 21) सुराप: अग्निस्पर्शां सुरां पिबेत् । (I. 25. 3) । अग्निं वा प्रविशेत् (Ibid. 6) I. XXV. 11 prescribes the three years' penance.

7 मद्यपाने क्लीवव्यवहारे चैवम् । मद्यभाण्डे स्थिता आपो यदि कश्चिद्द्विजोऽर्थवित् । पद्मोडुम्बर-विल्वपलाशानामुदकं पीत्वा त्रिरात्रेणैव शुध्यति । अभ्यासे सुराया अग्निवर्णां तां द्विज: पिबेत् ।

8 सुरा वै मलमन्नानां पाप्मा च मलमुच्यते ।तस्माद् ब्राह्मणराजन्यौ वैश्यश्च न सुरां पिबेत् । 94.
गौड़ी माध्वी च पैष्टी च विज्ञेया त्रिविधा सुरा । यथैवैका तथा सर्व्वा न पातव्या द्विजोत्तमै: । 95.

food and hence sin itself and forbids it for the three higher castes. In 95 he divides *surā* into three classes and all three are forbidden to Brahmins. Thus the restriction is total in the case of the highest caste; for the other two malted rice (that is *surā*) alone is prohibited. *Manu* as usual is stricter than his predecessors for in XI. 68 he holds even the smell of *surā* as a sin causing loss of caste and eating from a wine-vessel as a contaminating sin (71).

Viṣṇu (XXII. 81-83) has a ten-fold division and all the kinds are forbidden to Brahmins as impure in their very touch, but not so in regard to the two other castes. His śloka 81 is the same as Manu XI. 95.[1]

Yājñavalkya repeats *Manu's* injunctions in III. 252-255. In the last of the ślokas he declares that a Brāhmin woman tasting liquor is transformed into an unclean animal.[2]

Uśanas prohibits the drinking as well as the touching of liquor.[3]

Saṃvarta I. 115 echoes *Manu* XI. 95. His changed reading of the last word, however, makes the prohibition applicable to all the three regenerate castes.[4]

The Kali ban on drinking may be regarded as a mere re-statement of the old law, even though it be construed as the restriction of the drinking of the two varieties Gauḍ and Mādhvī for Kṣātriyas and Vaiṣyas (*vide* Mit. III. 253).[5]

[1] माधूकमैक्षवं टाङ्कं कौलं खार्जूरपानसे। मृद्विकार-समाध्वीकं मैरेयं नारिकेरजम्।
अमेध्यानि दशैतानि मद्यानि ब्राह्मणस्य तु। राजन्यश्चैव वैश्यश्च स्पृष्ट्वैतानि न दुष्यतः।

[2] पतिलोकं न सा याति ब्राह्मणी या सुरां पिबेत्। इहैव तु शुनी गृध्रो शूकरो चाभिजायते।

[3] मद्यमदेयमपेयमनिर्ग्राह्यमिति।

[4] द्विजैः सदा for द्विजोत्तमैः।

[5] *Cf.* Kumāravacana (cited in Prāyaś. Viv., p. 111)—सुरापान-
निषेधोऽयं जात्याश्रय इति स्थितिः। न पिबेद् ब्राह्मणो मद्यं निषिद्धमपि चापरम्।

Mitākṣarā in the same passage cites a text of *Pulastya* showing the 12 kinds of spirits.[1]

Bṛhaspati quoted in the same commentary says that on drinking with knowledge, purification is obtained through swallowing scalding liquor till it burns to death.[2]

Bṛhat-Yājñavalkya says that the Kṣatriya and the Vaiśya incur no sin even by deliberate drinking.[3] *Bṛhat-Viṣṇu* cited in Mitākṣarā and Madana-pārijāta gives 10 classes as in Pulastya omitting *āriṣṭa* and *drākṣa* and forbids all the varieties to a Brahmin. *Vijñāneśvara* has a note to the effect that *surā* properly means malted rice and that it is forbidden to all the three castes. He argues that *surā* is so used in Sautrāmaṇī but he does not state the ban on the use of spirituous liquor in that sacrifice.[4] He cites the authority of Vyāsa to show that liquors other than this particular kind are permitted to the other two regenerate castes.[5]

The exact import of the prohibition is differently construed by different writers. According to *Dāmodara* it means the prohibition of all kinds of liquor in the case of the second and third regenerate castes and in Tāntric rites.[6] Smṛti-

[1] पानसं द्राक्षमाधूकं खार्ज्जूरं तालमैक्षवं। मधूत्थं सैरमारिष्टं मैरेयं नारिकेलजम्। समानानि विजानीयात् मद्यानेकादशैव तु। द्वादशं तु सुरा मद्यं सर्व्वेषामधमं स्मृतं।

[2] सुरापाने कामकृते ज्वलन्तीन्तां विनिक्षिपेत्। मुखे तया विनिर्दग्धो मृतः शुद्धिमवाप्नुयात।

[3] कामादपि हि राजन्यो वैश्यो वापि कथञ्चन। मद्यमेव सुरां पीत्वा न दोषं प्रतिपद्यते।
(Vṛddha-Yājñavalkya cited in Prāy. Viv., p. 109).

[4] ब्राह्मणस्य तु मद्यमात्रनिषेधोऽस्तुत्पत्तिप्रभृत्येव, राजन्यवैश्ययोस्तु न कदाचिदपि गौड्यादि-मद्यप्रतिषेधः। शूद्रस्य तु न सुराप्रतिषेधः नापि मद्यमात्रप्रतिषेधः। * * * अयञ्च सुरानिषेधोऽनुपनीतस्य अनूढायाश्च कन्याया भवत्येव।

[5] उभौ मध्वासवक्षीवौ उभौ चन्दनचर्च्चितौ। एकपर्य्यङ्कशयितौ दृष्टौ मे केशवार्ज्जुनौ॥

[6] मद्यं गौड़ीमाध्व्यादिरूपं क्षत्रियवैश्ययोः न ब्राह्मणस्य। Kalivarjya-vinirṇaya—यद् वा यद् वामागमादौ त्रैवर्णिकपुरस्कारेणोक्तं देवनैवेद्यादौ मद्यं तदिह निषिध्यते। अथवा विनायकशान्तौ मूलजातशान्तौ च पक्वं पिष्टं सुगन्धं वा सुरां न विविधामपि सुरापौलिकमांसाद्यैर्नैवेद्यैर्भोजनादिभि-रित्येताभ्यां यन्मद्यं प्राप्तं तच्च।

kaustubha criticising his view says that the restriction applies to the use of spirituous liquor in Vedic sacrifices and in propitiatory ceremonies prescribed in the Smṛtis. It has no reference to the use of Surā in Tāntric rites.[1]

Further the expression **सौत्रामण्यां सुराग्रहणस्य संग्रहः** does not mean social intercourse with one who uses *Surā* in such rites, but only the practice of using spirituous liquor in this particular sacrifice.[2]

Soma-selling

The drinking of *soma* in sacrifices was a privilege of Brāhmins (*vide* Sec. on Surā). The performance of the optional (*kāmya*) *soma*-sacrifice was competent to well-to-do householders. Thus Manu (XI. 7-8) permits it to one who had more than 3 years' provisions. But the selling of the sacred plant by a Brahmin was held in disesteem to the same degree that its drinking was esteemed. Compare *soma*-purchase in *Kṛṣṇa-Yajurveda Kāṇḍa* I, *Prapā* ii.7. According to Eggeling the purchase was symbolical (S. B. E. Vol. XXVI. 71. n. 1). The plant was obtained from the ritual of the conquered peoples; it was a drug causing an orgiastic result which was really strange to the Aryan temperament; this would explain among other things the contempt shown for the *soma*-seller in the Vedic ritual. This was due to the inglorious part played by the seller in the little mock-drama of *soma*-selling and buying described in Āpastamba, II. 71. The *soma*-seller was beaten (Śat. Brāh. Kāṇḍa III,

[1] वस्तुतस्तु मेधपदोक्तयज्ञसाहचर्यात् श्रौतेषु यज्ञेषु सौत्रामण्यादिषु स्मार्त्तेषु विनायकशान्त्यादिषु विनियुक्तमद्यनिषेधोऽयम्। यत्तु वामागमादौ विहितस्य निषेध इति तदसत्।

[2] सौत्रामण्यां यजेत वा सौत्रामण्या इत्यादिना विहिते। अथ सुराग्रहान् गृह्णाति इति विहित-सुराग्रहग्रहणस्य संग्रहः प्रयोगविधिना अनुष्ठापनम्। यत्तु संग्रहपदस्वारस्यानुसारेण सुराग्रहणस्येत्यनेन सुराग्रहण-कर्त्तारं (?) विवक्षितत्वात्तस्य संग्रहो व्यवहार इति व्याख्यातं तन्न।—Kalivarjya-vinirṇaya.

Adh. iii. Brāhmaṇa 3) and driven away with blows (Kāt. VII 8-27) given with a speckled cane. He buys off the *soma*-cow with another cow and then dismisses her to the cowpen and if the *soma*-seller objects, he is to be beaten with a speckled cane. The Mānava Śr. Sūtra simply says that they are to give the *soma*-seller something for compensation

The *soma*-selling Brahmin was regarded as degraded. Thus *Manu* (III. 158) classes him with an incendiary, a poisoner, a sea-voyager as unfit io be invited to sacrifices and exequies (हव्य कव्य). Gifts to him only ensure filth and dirt in life hereafter (III. 180). *Vaśiṣṭtha* ranks him with a thief, an impotent man and as one whose food should not be eaten (Ch. XIV). Such is also the rule laid down by *Yājñavalkya* (I. 165). The Kalivarjya text (XII) of Śrīdhara formally prohibits this practice [1] (*vide* Mādhavācārya on Jaimini III. vii. 15).

Initiation into Satras

Soma-sacrifices were of different varieties—the one-day (*ekāha*), the *ahīna* (from 2 to 12 days) and *satra* (from 12 days upwards). The last was a long sacrificial session consisting of a hundred *Agniṣṭomas*, *Ukthyas* and *Atirātras*. In Ait. Br. and Harivaṃśam it is described as lasting for 13 to 100 days and sometimes for 1000 years. The word *saṃvatsara* (year) in this context signifies a day (Kāty. Śr. Sūtra, Adh. I, Kaṇḍikā VI) Such a protracted sacrifice was beset with difficulties. Śat. Br. XII. ii. 1. 1 says that a year's sacrifice is like crossing an ocean. Elsewhere in the same Brāhmaṇa the difficulties in the way of performance of *satras* are dwelt upon: Such indeed are the wild ravines of sacrifice and they (take) hundreds upon hundreds of days' carriage-drives; and if any venture into them without

[1] क्रय एव ज्योतिष्टोमाङ्गत्वेन श्रूयते न विक्रयः। न चाविहितमृत्विजः कुर्वन्ति। तस्मादन्यो विक्रेता।—*Nyāyamālāvistara*.

knowledge, then hunger and thirst, evil-doers and fiends harass them, even as fiends would harass foolish men wandering in a wild forest; but if those who know this do so, they pass from one duty to another, as from one street into another and from one safe place to another, and obtain well-being, the world of heaven. Kāty. Śr. S. I. vi. 16.

Śavarabhāṣya on Jaimini Sūtra VI. vi. 16-23 has a discussion on this topic and declares the Brahmin alone competent to do it.[1] According to *Dāmodara* this prohibition invalidates the performance of *satras* in the Kali age—*satras* in which the *yajamāna* (institutor of sacrifices) took part.

Worship of an Idol under a Vow

The meaning of the title of this prohibition is disputed. According to Dāmodara it means 'a sacred vow of lifelong worship of idols like Viṣṇu' taken in words like 'This image only I will worship as long as I live.'[2] In ancient works, the practice is sometimes condemned, such as the worship of Mahādeva in Baudh. Gṛ. Sūtra—Praśna VII. Those who performed such worship were called *haradvijas*. Likewise the *vaikhānasas* were a sect of Vaiṣṇava Brahmins who attended on an idol of Viṣṇu for payment. Devala Brahmins have always been held in disesteem. Manu and *Sannyāsa* (II. 3) and *Nārada-parivrājaka* (III. i) *Upaniṣads* declare them ineligible for Sannyāsa. Anantadeva disputes this interpretation on the ground that there is no *Śastraic* sanction for such practice. His explanation turns on the preposition *abhi* (अभि) and he says that *abhyarcanā* means worship with a view to gaining a direct vision of the deity such as is illustrated in the case of

[1] गवामयनादौ सप्तदशावराश्चतुर्विंशतिपरमाः सत्रमासीरन्नित्यादिना विहिता दीक्षा यजमानानाम्, अनेन च सत्रदीक्षामुखेन विप्राणां सत्राधिकार एव कलौ पर्य्युदस्यते— कलिवर्ज्यविनिर्णयः।

[2] So also Nirṇayasindhu—वेतन ग्रहणेन प्रतिमापूजा।

Dhruva and others in the Purāṇas. But he also fails to cite any Smṛti text either enjoining or prohibiting such worship. The view of Dāmodara seems to be better and the prohibition confirms the condemnation of *devalas* or priests attached to private temples who perform the worship for pay.[1]

Lifelong and long-continued Studentship

Of the two kinds of Brahmacārins the *naiṣṭhika* (perpetual) and the *upakurvāṇa* (would-be householder), the former continued the life of the student-celibate to the end, till his death (Manu II. 243) in the house of his preceptor and thereby attained his highest spiritual destiny (II. 249). The latter (otherwise known as the *snātaka*) was according to Pār. Gṛ. Sū. II. 5. 32 of three varieties according as he finished by completing studies or his vows or both.[2] For the student-celibate the rule is laid down in Baudh. Dh. S. 1.2.1 that he is to study for forty-eight years or twenty-four or twelve for each Veda.[3] On this *Govindasvāmin* comments that these alternatives turned on capacity. *Baudhāyana*[4] adds: Since life is uncertain. And there is the Vedic text that one should instal the sacred fires while yet one's hair is black.[5] In Āpas. Dh. S. I. 2. 12. 14, the periods of residence are prescribed as forty-eight, thirty-six or twenty-four years and in *sūtra 16* he adds that 12 years should be the shortest term. *Gautama* says

[1] Manu III. 152—Kullūka's comment—देवलः प्रतिमापरिचारकः, वर्त्तनार्थत्वेनैतत् कर्म कुर्वतोऽयं निषेधो न तु धर्म्मार्थम्।

[2] See under the Preceptor's Fee

[3] अष्टचत्वारिंशद् वर्षाणि पौराणं वेदब्रह्मचर्य्यम्, चतुर्विंशति द्वादश वा प्रतिवेदम। संवत्सरावमं वा प्रतिकाण्डम् ग्रहणान्तं वा।

[4] एते च विकल्पाः सामर्थ्यापेक्षया द्रष्टव्याः।

[5] जीवितस्यास्थिरत्वात्। कृष्णकेशोऽग्नीनादधीतेति श्रुतिः।

that 12 years should be given to the study of each of the Vedas. *Manu* III. 1. 2 lays down the rule that 36 years' residence in the family of the preceptor for the study of three Vedas or one-half or one quarter thereof should be the period.[1] Similar provision is found in *Vaśiṣṭha* VII. 1.[2] In *Yājñavalkya* I. 36 the period for the study of one Veda is shown as either 12 or 5 years.[3] The term of 12 years for one Veda is prescribed by Devala (cited in Madana-pārijāta, p. 96).[4] The curtailment of the period to 5 years in Yāj. is significant as showing that the extreme length of the period enjoined in the earlier *Smṛtis* was felt as a hardship.[5] Śavara (not later than 5th century A.C.) commenting on Jaimini Sūtra 1. 3. 2 remarks on the absurdity of the prescription.[6] He says that the *Smṛti* injunction is unreliable since it is evidently the outcome of a desire to conceal lack of manhood by those who framed it. And a rule for which a secular motive can be found is not an authentic Smṛti. Also on 1. 3. 23 he says that the rule is opposed to the Vedic injunction that a man while yet black-haired having begotten a son should consecrate the

[1] षट्त्रिंशदाब्दिकं चर्य्यं गुरौ त्रैवेदिकं व्रतम्। तदर्द्धिकं पादिकं वा ग्रहणान्तिकमेव वा। वेदानधीत्य वेदौ वा वेदं वापि यथाक्रमम्।

[2] चत्वार आश्रमाः * * * तेषां वेदमधीत्य वेदौ वेदान् वा अविशीर्णब्रह्मचर्य्योऽप निच्छेत् तमावसेत्।

[3] प्रतिवेदं ब्रह्मचर्य्यं द्वादशाब्दानि पञ्च वा। ग्रहणान्तिकमित्येके।

[4] अशक्तश्चेत षट्त्रिंशद्वार्षिकी' चतुर्विंशतिद्वादश वा प्रतिवेदम This text of Devala in prose was evidently other and earlier than the Devala-smṛti in Smṛti-samuccaya (Ānandāśram Edn.).

[5] Also proved by Āpas. Dh. S. I. v. 4-5: Hence in these later times no sages are born on account of the violation of the rules (of student-life).

[6] हेतुदर्शनाच्च। अपुंस्त्वं प्रच्छादयन्तश्चाष्टचत्वारिंशद् वर्षाणि वेदब्रह्मचर्य्यं चरितवन्तः। तत्र एषा स्मृतिरवगम्यते।

sacred fires. *Kumārilabhaṭṭa*[1] in his Tantravārttika on the same *Sūtra*, however, seeks to reconcile the different texts prescribing periods of studentship and to meet the criticism of his predecessor. He says that the different alternatives are found in different authentic *Smṛtis* and, therefore, there is no conflict between them, since they lay down alternatives. *Gautama*, he says, after declaring the observance of 12 years' studentship for those who wanted early to become householders had laid down the sacond alternative in the form of 12 years for each Veda or 48 years in all.

Modern commentators hold that by this particular prohibition perpetual studentship is barred.[2] Some also think that studentship with a view to the study of the Veda is restricted but not perpetual studentship. Hence the practice of the latter among the people of the South is quite in accordance with the *śāstras*. The prohibition of life-long studentship rests on two texts—*Brahmapurāṇa* (quoted by *Aparārka*) and *Bṛhannāradīyapurāṇa*.[3] (Chap. XXIII verse 15).

Behaviour towards a Preceptor's Wife

The meaning of the title is disputed. According to Anantadeva it means residence on the part of a perpetual student-celibate till death under the care of the preceptor's

[1] अष्टचत्वारिंशद्वर्षे वेदब्रह्मचर्य्याचरणस्यापि स्मृतावेव पञ्चान्तर-विकल्पोपनिबन्धनादाश्रमान्तर-विषयत्व-सम्भवाद् वा विरोधाभावः। तथाहि वेदानधीत्य वेदौ वा वेदं वापि यथाक्रमम्। सामर्थ्या-श्रमयोग्यत्वमङ्गीकृत्यैतदुच्यते। गौतमेनापि द्वादश वर्षाणि एकवेदब्रह्मचर्य्यं चरेदिति प्रथमकल्प-माशुगार्हस्थ्यप्रतिपत्त्यर्थमुक्त्वा द्वितीये कल्पे द्वादश प्रतिवेदं वा सर्व्वेष्विति अष्टचत्वारिंशत्-परिग्रहः कृतः।

[2] Kalivarjya-vinirṇaya refers to the view of Rāmacandrācārya —दीर्घकालं ब्रह्मचर्य्यम् इति पादार्थं संगृह्य ब्रह्मचर्य्यमिति नैष्ठिकमिति रामचन्द्राचार्य्योक्तिः।

[3] अतश्च प्रत्यूहप्रवृत्तनैष्ठिकं ब्रह्मचर्य्यं विधित एव तत्कला वप्यनुष्ठेयमिति भाति—Kalivarjya-vinirṇaya. Also Anantadeva नत फलकामं प्रति नैष्ठिको ब्रह्मचारी तु वसेदाचार्य्यसन्निधौ इति प्रक्रम्य "अनेन विधिना देहं साधयन् विजितेन्द्रियः" ब्रह्मलोकमवाप्नोति न चेह जायते पुनरिति नित्यवद्विहित-नैष्ठिकब्रह्मचर्य्यनिवृत्तिरपूर्व्वा विधीयते। गौरवात—Smṛti-kaustubha, p. 474.

wife as under the preceptor himself.[1] In this construction he differs from Dāmodara who understands by the expression the observance of the forms of salutation towards the wife of the Guru as towards the Guru himself.[2] But the wording exactly agrees with *Manu's* śloka II. 247.[3] According to Medhātithi 'behaviour as towards the Guru' in this śloka means duties like offering of the gains of begging, etc.,[4] and according to Kullūka it means service, etc.[5] The usage goes back to the Vedic times. Thus Āpas. Dh. S. 1. 2. 6. 1 : Every night he shall put his teacher to bed after having washed his (teacher's) feet and after having rubbed him. I. 2. 7. 27 : He shall behave towards his teacher's wife as towards the teacher himself, but he shall not embrace her feet nor eat the residue of her food. The same rules occur in *Gautama* (Ch. 2).[6] *Vaśiṣṭha* (VII) lays down that after the death of the Ācārya the student-celibate shall tend the sacred fire till the dissolution of his body ; here there is no mention of the wife and the son of the preceptor.[7] In *Viṣṇu* the order in which the alternative courses should be adopted is somewhat different from that in *Gautama*.[8] According to him upon the demise of the Ācārya, the perpetual student should seek residence with the Ācārya's son or with his wife or his *savarṇas*. Failing these he should tend the sacred fire (XXX. 45-46). In II. 210 *Manu* declares that like the Guru, his wives of the same *varṇa* are to be honoured.[9] Hārīta

1 Smṛti-kaustubha. 2 Kalivarjya-vinirṇaya.

3 आचार्य्ये तु खलु प्रेते गुरुपुत्रे गुणान्विते । गुरुदारे सपिण्डे वा गुरुवद् वृत्तिमाचरेत् ।

4 गुरुवद्वृत्तिः भैक्ष्यनिवेदनादि । 5 गुरुजनशुश्रूषा ।

6 Gautama—तद्भार्य्यापुत्रेषु चैवम् । नोच्छिष्टाशनस्नपनप्रसाधनपादप्रक्षालनोपमर्द्दनोपसंग्रहणादि । विप्रोष्य उपसंग्रहणं गुरुभार्य्याणां तत्पुत्रस्य च । नैके युवतीनाम् ।

7 Vaśiṣṭha—आचार्य्ये प्रमीतेऽग्निं परिचरेत् आशरीरविमोक्षणात् ।

8 ततआचार्य्ये प्रेते गुरुवद् गुरुपुत्रे वर्त्तेत । गुरुदारेषु सवर्णेषु वा । तदभावे ऽग्निशुश्रूषुर्नैष्ठिको ब्रह्मचारी स्यात् । Chap. XVIII, 45-46.

9 गुरुवत् प्रतिपूज्याश्च सवर्णा गुरुयोषितः ।

Saṃhitā, a later Smṛti work, also leaves out the teacher's wife in this connection.[1]

According to some texts, perpetual studentship is prohibited in the Kali age.[2] In view of these the prohibition of this detail about the mode of life is superfluous. This circumstance along with the words in *Manu's* text with which the title exactly agrees shows Dāmodara's interpretation to be better. But even that is not free from objection. The forms of salutation enjoined by the earlier writers on sacred law towards the teacher's wife are restricted in the later works. And so far as these restricted forms meant for observance by Brahmacārins are concerned, the rules still have their application.

The Preceptor's Fee

Brahmacārins of the Snātaka variety were of three kinds—those that completed studies, those that completed their vows and those that completed both (Pār. Gṛ. S. and Hārīta).[3] On completion of his term, the Brahmacārin had to pay a fee to his preceptor (Āś. Gṛ. S.).[4] Āpas. Dh. S 1. 7. 19[5] says that the fee had to be paid according to the capacity of the pupil. And the Sūtras following permit the fee to be procured even from an *Ugra* or *Śūdra*. The fee had to be up to the pupil's highest capacity, for the debt to the *guru* was unrepayable. *Vīr. Mit.* quotes Vedic texts to the effect that the whole earth did not

[1] तस्मिन्नेव नयेत् कालमाचार्य्यं यावदायुषम् ।
तदभावे च तत्पुत्रे तच्छिष्ये वाथवा कुले ॥ III. 14.

[2] नैष्ठिकं ब्रह्मचर्य्यम् ।

[3] त्रय: स्नातका भवन्ति विद्यास्नातको व्रतस्नातको विद्याव्रतस्नातक इति—Kāṇḍa II, Kaṇḍikā V, Sūtra 32.

[4] विद्यान्ते गुरुरर्थं निमन्त्र्य स्नात: कृताप्लवनस्य स्नानम् ।

[5] कृत्वा विद्यां यावतीं शक्नुयाद वेददक्षिणामाहरेद धर्म्मतो यथाशक्ति ।

suffice for the purpose.[1] The payment was not, however, absolutely indispensable. In fit cases the mere permission of the Guru to the pupil to pass on to the next order of life might be enough. *Manu* (II. 245-6) specifies the different kinds of payment.[2] On this *Mitra Miśra* comments that, in case of capacity, what is desired by the Guru is enjoined to be given. Failing that, a cow may be given for, according to Śruti, the cow is called the *vara* or the boon desired.[3] (*Cf*. Yāj. 1. 51.)[4] *Vyāsa* (or Vedavyāsa) declares that the fee had to be paid as desired by the Guru.[5] On the word Cow in this text *Vīr. Mit.* cites a Śruti text which says that the cow is the boon desired since there is no measure of its value. *Laghuhārīta* cited in the same digest says that the debt to the teacher who teaches even a single letter could not be repaid with any equivalent on this earth.[6] Kālidāsa's Raghuvaṃśam, Canto V, Ślokas 20-21 imply that the fee demanded by the preceptor had to be secured anyhow. *Mitākṣarā* speaks of two alternatives according to capacity, age, etc.,—the fee desired or the preceptor's permission.[7] Anantadeva (of the 17th century)

[1] Sāma-veda—यद्यप्यस्मा इमां परिगृहीतां धनेन पूर्णां दद्यादेतदेव भूयः। Tāpanīya Śruti—सप्तद्वीपवती भूमिर्दक्षिणार्थं न कल्पते।

[2] न पूर्व्वं गुरवे किञ्चिदुपकुर्व्वीत धर्म्मवित्। स्नातस्तु गुरुणाज्ञप्तः शक्त्या गुर्व्वर्थमाहरेत्॥ क्षेत्रं हिरण्यं गामश्वं छत्रोपानहमासनम्। धान्यं शाकञ्च वासांसि गुरवे प्रीतिमावहेत्॥

[3] अनेन सत्यां शक्तौ गुर्व्वभिलषितमेव देयमित्युक्तं भवति तदसम्भवे गौर्व्वा गौर्व्वा वर इति श्रुतेः।

[4] गुरवे तु वरं दत्त्वा स्नायीत तदनुज्ञया। वेदं व्रतानि वा पारं नीत्वा ह्युभयमेव वा।

[5] गुरुशुश्रूषया विद्यां समाप्य विधिवद् द्विजः। स्नायीत गुर्व्वनुज्ञातो दत्त्वास्मै दक्षिणां हि गाम। समाप्य वेदौ वेदान् वा वेदं वा प्रसभं द्विजः। स्नायीत गुर्व्वनुज्ञातः प्रदत्तोदितदक्षिणः॥ (I. 43)

[6] Vīr. Mit.—गोर्व्वरत्वं मात्राहीनत्वात्। गोस्तु मात्रा न विद्यते इति श्रुतिः। Laghu-Hārīta cited in Vīr. Mit.—एकमप्यक्षरं यस्तु गुरुः शिष्ये निवेदयेत्। पृथिव्यां नास्ति तद्द्रव्यं यद्दत्त्वा त्वनृणी भवेत्॥

[7] वरमभिलषितं यथाशक्ति दत्त्वा स्नायादशक्तौ तदनुज्ञयाऽदत्तवरोऽपि एषाञ्च पक्षाणां शक्ति-कालाद्यपेक्षया व्यवस्था। On Yāj. I. 51.

says that by the fee was not meant any payment but the gift demanded by the preceptor, as in the case of Śrīkṛṣṇa reviving the dead son of Sāndīpani.[1] The Kalivarjya text repeals formally the ancient usage as to the obligation to pay the demanded fee.

The Use of the Water-bowl or Kamaṇḍalu

The bar against the use of the water-bowl whether by the Brahmacārin or the Sannyāsin in the Kali age illustrates the ascendancy of stricter ideas of ceremonial cleanliness in later times. The Kamaṇḍalu is a wooden or earthen bowl to hold water. The smaller ones are called *Karakās*. The Kamaṇḍalu was carried by Snātakas and by Yatis (*Vaikh. Sm. S.* X. 1, *Baudh. Dh. S.* 1. 3. 8; also *Manu* VI. 54-55).[2] Very particular directions are given by Baudhāyana: (1) Those learned in the Vedas prescribed the mode of use of the *Kamaṇḍalu*. (3) Should his mind so misgive that it has become impure he should burn it all round in fire made of Kuśa or other grass. (4) Hereafter should it be polluted by dogs or crows it is ordered to be burnt to the colour of flame. (5) On pollution by excrements, etc., giving up. (6) (In case of its being broken) in the fire or in the *Kamaṇḍalu* do the Homa a hundred times with the *Vyāhṛtis* or simply repeat them. (7) Picking up the potsherds and throwing them into water and repeating the sacred Gāyatrī not less than ten times, take another. (9) If taken from a *Śūdra*, do it a hundred times and if

[1] विद्यान्ते गुरुप्रेरणया दक्षिणादानं यथा सान्दीपनये श्रीकृष्णो मृतपुत्रस्य न तु गुरवे दक्षिणा-मानम्।

[2] गृहस्थाश्रमी द्वे यज्ञोपवीते वैणवं दण्डं कमण्डलुञ्च धारयेत्—Vaikh. Sm. Sūtra. दाक्षायणी ब्रह्मसूत्री वेणुमान् सकमण्डलुः—Yāj. I. 133. मेखलामजिनं दण्डमुपवीतं कमण्डलुम्। अप्सु प्राश्य विनष्टानि गृह्णीतान्यानि मन्त्रवत्—Manu II. 64. स्नातकानां द्वितीयं स्यादन्तर्वासस उत्तरम्। यज्ञोपवीते द्वे यष्टिः सोदकश्च कमण्डलुः। Vaśiṣṭha Ch. XII.

from a *Vaiśya* half a hundred, if from a *Kṣatriya* 25 and if from a *Brahmin* 10 times. The minutiæ of the manner of use are also set forth, e.g., as to whether the *Kamaṇḍalu* is to be filled or not, the answer is that it should be with the *Prāṇāyāma*. Whether the *Kamaṇḍalu* used according to directions conduces to ceremonial purity or not is also considered. (14) Having washed the hands and feet with the water of the *Kamaṇḍalu*, one is unclean towards others so long as wet but cleanses only himself; hence he is known not to do any other act. (15) Baudhāyana says that so it is, since every time washing is done up to the elbow, washing with other water (is needed). (16) Also they cite: The *Kamaṇḍalu* was prescribed of yore by Brahman and the chief sages for the purification of the twice-born, hence it should be carried always. Washing, drinking and the performance of the *Sandhyā* are to be done with it without any misgiving, if one desires one's good. The learned should do so with a pure mind and must not think it wrong.[1] (18) While easing himself, he holds it in his right hand and in the left the water for washing. (19) This succeeds with *Sādhus*, that is, good men. The word *Sādhus* means those who do not doubt the import of the Śāstras.[2] Āpas. Dh. S. I. 3.25: Bringing all he obtains to his teacher he shall go a-begging with this vessel morning and evening (and he may) beg (from everybody) except low-class people unfit for association (with Āryas) and *abhiśastas*. The use of the *Kamaṇḍalu* is prescribed by the writers of the *Saṃhitās* also, e.g., *Manu* II. 64, IV. 36 and *Vaśiṣṭha* in dealing with the life of the Snātaka.[3]

[1] कमण्डलुर्द्विजातीनां शौचार्थं विहित: पुरा। ब्रह्मणा मुनिमुख्यैश्च तस्मात्तं धारयेत् सदा॥ तत: शौचं तत: पानं सन्ध्योपासनमेव च। निर्व्विशङ्केन कर्त्तव्यं य इच्छेच्छ्रेयमात्मन:॥ कुर्य्याच्छुद्धेन मनसा न चित्तं दूषयेद बुध:। I. iv. 19-20.

[2] साधूनां निर्व्विशङ्कित-शास्त्रार्थानाम्।

[3] Manu, IV. 36.—वैणवीं धारयेद यष्टिं सोदकञ्च कमण्डलुम्। यज्ञोपवीतं वेदञ्च शुभे रुक्मे च कुण्डले॥ Vaśiṣṭha, Ch. XII—यज्ञोपवीते द्वे यष्टि: सोदकश्च कमण्डलु:।

The *Kamaṇḍalu* was carried also by those in the third and fourth orders of life (Yāj. III. 58).[1] This sage does not mention the water-bowl in the case of the Brahmacārin. The Mitākṣarā on this śloka cites an anonymous Smṛti and also a text of *Devala*.[2]

Aparārka quotes from Brahma-purāṇa a text forbidding the practice.[3] *Dāmodara* remarks that the expression "carrying the *Kamaṇḍalu*" refers to long-continued studentship which is otherwise forbidden. Madanapārijāta takes it to signify life-long celibate studentship.[4] But the prohibition of this practice may also be taken to follow from the same text. It cannot similarly refer to the third stage of life, the adoption of which is separately prohibited.

From Baudhāyana Sūtra it is clear that the usage was a matter of comment which is the origin of the prohibition. Thus *Baudh. Dh. S.* I. 4. 23: Just as the utensil for *Soma*-drinking called *camasa* is sacred through contact with the *soma*, the *Kamaṇḍalu* also is always sacred through contact with water.[5] (25) Therefore without it he should not go a-journey, nor to the boundary of his habitation, nor from house to house. (26) Some say, nor even a single pace and others, not beyond the flight of an arrow. (27) If he desires the increase of his merit.

The usage was a subject of frequent controversy. *Govindarāja*, the commentator of *Manu*, dealt with it in his

[1] सर्व्वभूतहितः शान्तस्त्रिदण्डी सकमण्डलुः। एकारामः परिव्रज्य भिक्षार्थी ग्राममाश्रयेत्॥ Yājñavalkya.

[2] Anonymous—त्रीन् वैणवान् दण्डान् मूर्द्धप्रमाणान् दक्षिणेन पाणिना धारयेत् सव्येन सोदकं कमण्डलुम्। Devala—काषायी मुण्डस्त्रिदण्डी कमण्डलु-पवित्र-पादुकासन-कन्थामात्रः।

[3]. Kalivarjya Text III.

[4] कमण्डलुविधारणमिति नैष्ठिकब्रह्मचारी गृह्यते—Mad. Pār., p. 16.

[5] *Cf.* Vaśiṣṭha, Ch. XII—अप्सु पाणौ च काष्ठे च कथितं पावकं शुचि। तस्मादुदक-पाणिभ्याम परिमृज्यात् कमण्डलुम्॥ पर्य्यग्निकरणं ह्येतन्मनुराह प्रजापतिः। कृत्वा चावश्यकार्य्याणि आचामेच्छौचवित्तमः॥

Smṛti-mañjarī referred to in his Ṭīkā on *Manu* III. (24) *Madana-pārijāta* says that by the term "carrying of the *Kamaṇḍalu*" the life-long student-celibate is understood. According to *Anantadeva* the prohibition is of the carrying of the water-bowl at all times prescribed as a duty for the *Snātaka* and not that enjoined by *Baudhāyana* from a motive of increase of merit.[1]

Govindasvāmin on Baudh. Dh. S. I. 3. 1 regards *Kamaṇḍalu-caryā* as a duty of the *Snātaka*.

Despite the prohibition the water-bowl is carried by *sannyāsins*.

Making No Provision for the Morrow

This practice was an extreme form of pious improvidence commended in the ancient works on sacred law. Householders were of four classes—*Vārtāvṛtti*, *Śālīna*, *Yāyāvara* and *Ghorācārika* (Vaikh. Gṛ. Sū. VIII. 5). Of this the third kind, that is Yāyāvara, was a Brahmin in easy circumstances who followed the six pursuits proper to his caste and tended the sacred fires and regularly entertained guests, and performed the sacrifices. In Baudh. Dh. S. III. 1. 4 the term is defined as one who lives by the best avocation.[2] *Devala* cited in *Mitākṣarā* defines the same as the better type of householders who avoiding priestly work, teaching, acceptance of gifts and saving of money, live by the modes called *Śila*, *Uñcha* and *Aśvastanikatā*, *i.e.*, picking up paddy by single ears or by bunches from the field or making no provision for the morrow at all. For this type the highest ideal was prescribed as the avoidance of all

[1] मनुना स्नातकधर्म्ममध्ये विहितं यत् सदा यज्ञोपवीतवत् कमण्डलुधारणं तन्निषिध्यते यत्तु बौधायनोक्तं सधर्म्मकं निषिध्यते इति तन्न। धर्म्माधिक्येऽपि कर्म्मभेदाभावात्। धर्म्माणामेव निषेधाङ्गीकारे तल्लक्षणाया अन्याय्यत्वात्।—Smṛti-kaustubha, p. 470.

[2] वृत्त्या वरया यातीति यायावरत्वम्।

saving. *Manu* IV. 7-8: Those that saved for one year were called "Kusūladhānya", those that stored up for six months were called "Kumbhīdhānya" according to Medhātithi.[1] According to Kullūka the periods are three years and one year respectively. Others again stored up substance for three days but the highest type did not provide for the morrow at all. Each following kind excels the preceding one, for by cutting down the means of livelihood one gains the worlds beyond (*i.e.*, Heaven, etc.). *Yājñavalkya* I. 128[2] closely repeats the same rule in one verse. *Aparārka* does not know of the Kali ban on this rule. He explains Yājñavalkya's text thus: So also these practices are for the Brahmin for avocations like acceptance of gifts, etc., are not possible to any other. *Vijñāneśvara* also is unaware of the prohibition. Referring to the rule of life here laid down, he says that it is addressed to the best-conditioned and self-controlled *Yāyāvara* and not to Brahmins as a class; for then there would be a conflict with texts which require three years' provision in a *soma*-drinker. The prohibition in Śrīdhara shows that the mode of life was either obsolete or an impossibility in the changed social conditions of the age.

Inferior Occupations for Brahmins in Distress

The earlier writers on the sacred law generally deal with the occupations of Brahmins—both ordinary and exceptional. The former comprise teaching, priesthood and acceptance of gifts (Manu, X. 76).[3] But failing these some other means of livelihood were also prescribed under definite restrictions.

[1] कुसूलधान्यको वा स्यात् कुम्भीधान्यक एव वा। त्र्यहैहिको वापि भवेदश्वस्तनिक एव वा॥
चतुर्णामपि चैतेषां द्विजानां गृहमेधिनाम्। ज्यायान् परः परो ज्ञेयो धर्मतो लोकजित्तमः॥—Manu.

[2] कुसूलकुम्भीधान्यो वा त्र्याहिकोऽश्वस्तनोऽपि वा। जीवेद्वापि शिलोञ्छेन श्रेयानेषां परः परः॥

[3] षण्णां तु कर्मणामस्य त्रीणि कर्माणि जीविका। याजनाध्यापने चैव विशुद्धाच्च प्रतिग्रहः॥
—*Cf.* Baudh. Dh. S., I. X. 2 which enumerates all six.

Gautama says that the occupation of a Kṣatriya or of a Vaiśya may be adopted but the Brahmin must not trade in certain unworthy commodities and in no case should he adopt the occupation of a Sūdra.[1] *Baudhāyana* (II. ii. 77. 8) says that the next lower occupation should be adopted and he adds that according to *Gautama* that of a Kṣatriya being too cruel was not fit for a Brahmin. Trading (indiscriminately) in all kinds of wares he holds as a degrading sin so also the service of a Śūdra.[2] Among minor sins he specifies certain kinds of occupation, such as *making of drugs, village-priesthood, histrionics, theatrical teaching, tending of cattle.*[3] And he also prescribes penances for degrading pursuits.[4] Agriculture and learning he holds to be inimical to each other (I. 5. 85).[5]

Āpastamba also formulates the general principle that trade is not permitted to a Brahmin but in distress it may be adopted to the exclusion of forbidden commodities. He also mentions these forbidden articles (I. 20. 10, 11, 12).[6] But exchange of some articles is allowed. In I. 21. 3 he says that a Brahmin must not reduce himself to extreme distress by avoiding forbidden trades.[7] And also after making a livelihood he should desist (Yāj. III. 35). These rules are repeated by *Manu* in Ch. 10 in which he further

[1] तदलाभे क्षत्रवृत्तिः। तदलाभे वैश्यवृत्तिः। तस्य अपण्यम्। पशवश्च हिंसा योगे। सर्व्वथा वृत्तिरशक्तावशौद्रेण। प्राणसंशये ब्राह्मणोऽपि शस्त्रमाददीत। (Ch. VII)

[2] सर्व्वपण्यैर्व्यवहरणम्। शूद्रसेवनम्।

[3] भैषजकरणम्। ग्रामयाजनम्। रङ्गोपजीवनम्। नाट्याचार्य्यता। गोमहिषीरक्षणम्। (61)

[4] तेषान्तु निर्व्वेशः। पतितवृत्तिर्द्वौ संवत्सरौ (80)। Permitted trades are—
पशवश्चैकतोदन्ता अश्मा च लवणोद्धृतः। एतद् ब्राह्मण ते पण्यं तन्तुश्चारजनीकृतः।

[5] वेदः कृषिविनाशाय कृषिर्वेदविनाशिनी। शक्तिमानुभयं कुर्य्यादशक्तस्तु कृषिं त्यजेत्॥

[6] अविहिता ब्राह्मणस्य वणिज्या। आपदि व्यवहरेत पण्यानामपण्यानि व्युदस्यन्।

[7] नात्यन्तमन्ववस्येत्। वृत्तिं प्राप्य विरमेत्।
Yāj.—निस्तीर्य्य तामथात्मानं पारयित्वा पथि न्यसेत्।

lays down that in order to avoid the occupations of a Kṣatriya or a Vaiśya, a Brahmin may be a teacher to degraded classes or accept gifts from them. (Śl. 103.) He is not polluted thereby for he is like fire and water. The Śūdra's life is strictly forbidden.[1]

Nārada who made a re-cast of *Manu's* Saṃhitā, repeats most of these rules. In I. 57 he says: "At no time must a Brahmin follow the occupation of a man of the vile caste or a vile man that of a Brahmin"; in either case expulsion from the caste would be the immediate consequence. In 59 he echoes Āps. Dh. S. I. 21. 4. and Yāj. III. 35. He says further: When, however, a Brahmin takes delight in these occupations (of a Kṣatriya) and persists in them, he is declared a *Kāṇḍapṛṣṭha* (a professional soldier) and must be expelled from society because he has swerved from the path of duty, *i.e.*, he must not be invited to obsequial feasts and other religious ceremonies—Asahāya.

In S. III (corr. to Manu X. 117) he declares that a Brahmin must never resort to usury, not even in extreme distress.[2]

Parāśara permits agriculture to a larger extent (2. 3. 4. 5) but cruelty to beasts must be avoided.[3] The Brahmin is freed from the incidental sin by performing sacrifices. *Parāśara Smṛti* (8th century) has been taken by Mr. Vaidya to prove that agriculture was largely pursued and hence these dispensations. In the *Āpastamba Saṃhitā*—a late work—these verses bearing on agriculture also occur.[4]

[1] *Cf.* Vaśiṣṭha, Ch. II—ब्राह्मणेन क्षात्री, क्षत्रियेण वैश्यसम्बन्धिनी। वैश्येन च शौद्रीत्येवं स्वानन्तरहीनवृत्तिरेव। अजीवन्तः स्वधर्म्मेणानन्तरामपापीयसीं वृत्तिमातिष्ठेरन्।

[2] ब्राह्मणः क्षत्रियो वापि वृद्धिं नैव प्रयोजयेत्।

[3] षट्कर्म्मनिरतो विप्रः कृषिकर्म्माणि कारयेत्।

[4] हलमष्टगवं धर्म्यं षड्गवं जीवितार्थिनाम्। चतुर्गवं नृशंसानां द्विगवन्तु जिघांसिनाम्॥ द्विगवं वृषघातिनामित्यपि पाठः।

The prohibition of distress-occupations in the Kalivarjya Text (XI) is not seriously taken note of by the digest-writers. *Mitākṣarā* did not know of this prohibition. *Madana-pārijāta* does not mention the ban. It merely says (p. 233) that even in distress to a Brahmin his own occupation is better than other occupations.[1] He quotes *Manu* (X. 97, 101-103) to show that rather than adopt the livelihood of other castes, a Brahmin should be a teacher or a priest to degraded classes, and, in the next place, accept gifts from one and all.[2] The occupations pursued since the time of the Kalivarjya and at present by Brahmins of the highest status in society show how little importance is attached to this particular prohibition in the Kali age.

Śūdra Cooks and Śūdra-cooked Food

Vedic literature is not without traces of the idea of pollution by the touch of *Śūdras*. The *Śūdra* is not to milk the cow for the *agnihotra*.[3] Sometimes, however, he is given a place in the *Soma* sacrifice.[4] The *rathakāra* may place the sacrificial fire like the twice-born classes.[5] Contact with a *Śūdra* and eating in company with him are not banned except for the preservation of sacrificial or ritual sanctity. The danger of contact with their food is emphasised in later writings. *Āpastamba* I. 18. 13. 14 allows eating from all castes who observe their duties under the

[1] आपद्यप्यन्यवृत्तिभ्यः स्ववृत्तिरेव ब्राह्मणस्य ज्यायसीत्याह मनुरेव ।

[2] वैश्यवृत्तिमनातिष्ठन् ब्राह्मणः स्वे पथि स्थितः । अवृत्तिकर्षितः सीदन्निमम् धर्म्मं समाचरेत् ॥ सर्व्वतः प्रतिगृह्णीयाद् ब्राह्मणस्त्वनयं गतः । पवि' दुष्यतीत्येतद् धर्म्मतो नोपपद्यते ॥ नाध्यापनाद् याजनाद् वा गर्हिताद् वा प्रतिग्रहात् । दोषो भवति विप्राणां ज्वलनार्कसमा हि ते ।

[3] *Kāṭhaka Saṃhitā*, XXXI. 2. *Maitrāyaṇī Saṃhitā*, IV. i. 3.

[4] *Śatapatha Brāhmaṇa*, V. v. 4, 9 and I. i. 4, 12. *Kātyāyana Śrauta Sūtra*, I. i. 6.

[5] *Taittirīya Brāhmaṇa*, I. i. 418.

Law.[1] According to some the *Śūdra* is excepted but of him also may be eaten, if he is devoted to the higher castes according to the sacred law. In 1. 6. 18. 6 he stresses the danger of contact with the food given by *Śūdras*.[2] At the same time, he lays down rules for the guidance of *Śūdra* cooks in the houses of *Brahmins*.[3] In II. 2. 3. 4 he says: Or *Śūdras* may prepare the food under the superintendence of men of the first three castes. *Sūtra* IX runs: He, the householder, himself shall place on the fire that food which has been prepared by *Śūdras* without supervision and shall sprinkle with water. Such food also they state to be fit for the Gods. I. 5. 16. 22 declares: But what has been brought (be it touched or not) by an impure *Śūdra* must not be taken. I. 6. 18. 3 says: Or they (*Brahmin* householders) may accept from an *Ugra* (a vile twice-born man or the offspring of a *Vaiśya* by a *Śūdra* woman) uncooked or (4) (a little) unflavoured boiled food. (5) (of such food they shall not take a great quantity but only so much as suffices to support life). (6) If (in times of distress) he is unable to keep himself, he may eat (food obtained from anybody) after having touched it with gold. *Haradatta*, the commentator, quotes *Chāndogya Up.* I. 10. 1 and *Ṛg Veda* IV. 18. 3 to show that it is lawful to eat even impure food as a dog's entrails under such circumstances.[4] Others explain the *Sūtra* thus: If he does not himself find any livelihood (in times of distress, he may dwell even with low-caste people who give him something to eat), he may eat (food given by them) paying for it (with some small gift in) gold or with animals. In connection with the rule

[1] सर्ववर्णानां स्वधर्मे वर्तमानानां भोक्तव्यं शूद्रवर्जमित्येके । तस्यापि धर्मोपनतस्य ।

[2] स्वयमपि अवृत्तौ सुवर्णं दत्त्वा पशुं वा भुञ्जीत ।

[3] आर्याधिष्ठिता वा शूद्राः संस्कर्तारः स्युः ।

[4] अवर्त्या शुन आन्त्राणि पेचे—Rg. v. मटचीहतेषु कुरुष्वाटिक्या जायया सहोषस्तिर्ह चाक्रायण इभ्यग्रामे प्रद्राणक उवास । स हेभ्यं कुल्माषान् खादन्तं बिभिक्षे ।—Ch. Up., I. x. 1-2.

of conduct for a *Brahmin* student he says—(13) According to some (food offered by people) of any caste who follow the rules prescribed for them except (that) of *Śūdras* may be eaten. (14) (In times of distress) even the food of a *Śūdra* who lives under one's protection for the sake of spiritual merit (may be eaten). (15) He may eat it after having touched it (once) with gold or with fire. He shall not be too eager after (such a way of living). He shall leave it when he obtains a (lawful) livelihood. (18) Food offered by an artisan must not be eaten. (19) Nor (that of men) who live by the use of arms (except *Kṣatriyas*). I. 19. 13: Now they quote also from a *Purāṇa* the following two verses:[1] The Lord of creatures has declared that food offered unasked and brought by the giver himself may be eaten, though (the giver be) a sinner provided the gift has not been announced beforehand. The manes or the ancestors of that man who spurns such food do not eat (his oblations) for 15 years nor does the fire carry his offerings (to the Gods). (14) Another verse from a *Purāṇa* declares: The food given by a physician, a hunter, a sergeant, a fowler, an unfaithful wife, or a eunuch must not be eaten. These rules came to be affirmed, modified, elaborated and stiffened in course of time. Thus in *Gautama* (XVII. 1) where the food of a *Śūdra* is permitted in distress, a trader and a non-artisan are barred but those of a cowherd, a tiller of one's lands, a family-friend and a servant are declared otherwise.[2] In *Maskari's* comment the servant is a slave and from this indication the *Śūdrahood* of the barber is determined.[3] In

[1] अथ पुराणे श्लोकावुदाहरन्ति—उद्यतामाहृतां भिक्षां पुरस्तादप्रवेदिताम्। भोज्यां मेने प्रजापतिरपि दुष्कृतकारिणः ॥ न तस्य पितरोऽश्नन्ति दश वर्षाणि पञ्च च। न च हव्यं वहत्यग्नि-र्यस्तामभ्यधिमन्यते ॥

[2] प्रशस्तानां स्वकर्मसु द्विजातीनां ब्राह्मणो भुञ्जीत। वृत्तिश्चेदन्तरेण शूद्रात् वणिक् चाशिल्पी। नित्यमभोज्याः। पशुपालक्षेत्रकर्षककुलसङ्गत-कारयितृ-परिचारका: भोज्यान्नाः।

[3] परिचारको दासः * * एतस्माल्लिङ्गात् नापितस्य शूद्रत्वमध्यवसीयते।

Vasiṣṭha the food of a *Śūdra* is declared as degrading.[1] The stricter law is formulated by *Manu* also who says 'a learned twice-born shall not eat cooked food from a *Śūdra* who does not practise exequial rites (therefore low-class) but when without livelihood he may take uncooked food enough for a night's meal.'[2] To this prohibition penalties are also attached by the *Smṛti-kāras*, such as *Manu*, *Yama*, *Śaṅkha* and *Vyāsa*.[3]

Aṅgiras permits taking of food from *Vaiśyas* in times of distress but never from *Śūdras*, and evil consequences are predicated by *Hārīta*, *Saṃvarta*,[4] *Jamadagni*.[5] *Yājñavalkya* and *Paiṭhīnasi* also prohibit it.[6] *Bhaviṣyapurāṇa* and *Parāśara* equally declare that contact with a *Śūdra* through acceptance of food or acquisition of knowledge or in any other way causes the fall of a *Brahmin*.[7] The latter,

[1] Ch. VI—पात्राणामपि तत् पात्रं शूद्रान्नं यस्य नोदरे ।

Ch. X—वृषलान्नपानवर्जी न हीयते ब्रह्मलोकाद् ब्रह्मलोकात् ।

[2] नाद्याच्छूद्रस्य पक्वान्नं विद्वानश्राद्धिनो द्विजः । आददीतामभेवास्मादवृत्तावेकरात्रिकम् ॥

[3] Manu, IV. 218 and Aṅgiras (72)—राजान्नं हरते तेजः शूद्रान्नं ब्रह्मवर्चसम् ।

Śaṅkha—शूद्रान्नरससम्पुष्टा ब्राह्मणाः पङ्क्तिदूषकाः ।

Vyāsa, IV. 64—शूद्रान्नेनोदरस्थेन यदि कश्चिन् म्रियेत यः । स भवेच्छूकरो नूनं तस्य वा जायते कुलम् ॥ 68—यस्य शूद्रा पचेन्नित्यं शूद्रा वा गृहमेधिनी । वर्जितः पितृदेवैस्तु रौरवं याति स द्विजः ॥

[4] Aṅgiras—वैश्येष्वापत्सु भुञ्जीत न शूद्रेऽपि कदाचन । Hārīta—शूद्रान्नेन तु भुक्तेन जठरस्थेन यो मृतः । स वै खरत्वमुष्ट्रत्वं शूद्रत्वञ्चोपगच्छति ॥ Yama—शूद्रान्नेनोदरस्थेन ब्राह्मणो यस्त्यजेत्तनुम् । आहिताग्निस्तथा यज्वा स शूद्रगतिमाप्नुयात् ॥ Saṃvarta—शूद्रहस्तेन योऽश्नीयात् पानीयं वा पिबेत् क्वचित् । अहोरात्रोषितो भूत्वा पञ्चगव्येन शुध्यति ।

[5] Jamadagni (also Hārīta)—ब्राह्मणान्नेन दारिद्र्यं क्षत्रियान्नेन प्रेष्यताम् । वैश्यान्नेन तु शूद्रत्वं शूद्रान्नेनरकं व्रजेत् ॥

[6] Paiṭhīnasi—गृहमेधी न शूद्रान्नमश्नीयात्, आयुर्बलं तेनेत्यपक्रामति । Jājñavalkya, I. 160—अग्निहीनस्य नान्नमद्यादनापदि । Mitākṣarā comments—अग्निहीनस्य श्रौतस्मार्ताग्न्यधिकाररहितस्य शूद्रस्य * * अनापदि न भुञ्जीत, न प्रतिगृह्णीयाद् वा ।

[7] शूद्रान्नं शूद्रसम्पर्कः शूद्रेण च सहासनम् । शूद्राज् ज्ञानागमश्चेति ज्वलन्तमपि पातयेत् ॥ Also Aṅgiras, I. 49.

however, prescribes expiation in the form of repentance and repetition of sacred *mantras*.[1]

This extreme position of aloofness from the *Śūdras* was a practical impossibility in a society in which they far outnumbered the twice-born classes. A compromise due to practical considerations resulted in exceptions in favour of certain occupational sub-castes among the *Śūdras*. Germs of these exceptions can be detected in the *Dharma Sūtras* from which extracts are given above. But they are elaborated in later writings. Thus *Uśanas*, *Viṣṇu*, *Manu*, *Yājñavalkya*, *Yama*, *Devala*, *Vyāsa* and *Parāśara* add to the castes indicated in *Āpastamba* and *Gautama* above.[2]

Another compromise was the relaxation of the prohibition in the case of certain kinds of cooked food. Texts specifying these excepted kinds of food are from *Hārīta*, *Aṅgiras*, *Atri*, *Parāśara*, and *Kūrma-purāṇa*.[3] The *Vīramitrodaya* shows a large collection of these texts.

[1] आपत्काले तु विप्रेण भुक्तं शूद्रगृहे यदि । मनस्तापेन शुध्येत द्रुपदां वा शतं जपेत् ॥—XI. 9.

[2] Uśanas—स्वगोपालौ भोज्यान्नः स्वक्षेत्रकर्षकश्च । Viṣṇu—आर्द्धिकः कुलमित्रश्च दासगोपालनापितौ । एते शूद्रेषु भोज्यान्ना यश्चात्मानं निवेदयेत् ॥ Manu—आर्द्धिकः कुलमित्रञ्च गोपालदासनापितौ । एते शूद्रेषु भोज्यान्ना यश्चात्मानं निवेदयेत् ॥ IV. 253 ; Yāj.—I. 168 ; Yama—Śl. 20 ; Vyāsa—III. 51-52 ; Pār.—XI. 20 ; Hārīta—

कुलमित्रं कुलपुत्रो भैत्यदः शिष्यकः सुहृत् । भवेद् यस्य सुखं लाभे भये त्राता च यो भवेत् ॥
एते शूद्रेषु भोज्यान्नाः मनो यत्र विभाव्यते ।

Devala—स्वदासो नापितो गोपः कुम्भकारः कृषीवलः । ब्राह्मणैरपि भोज्यान्नाः पञ्चैते शूद्रयोनयः ॥
Parāśara defines the castes—

शूद्रकन्या समुत्पन्नो ब्राह्मणेन तु संस्कृतः । संस्कृतस्तु भवेद् दासो ह्यसंस्कारे तु नापितः ॥
क्षत्रियाच्छूद्रकन्यायां समुत्पन्नस्तु यः सुतः । स गोपाल इति ज्ञेयो भोज्यो विप्रैर्न संशयः ॥
वैश्यकन्यासमुत्पन्नो ब्राह्मणेन तु संस्कृतः । आर्द्धिकः स तु विज्ञेयो भोज्यो विप्रैर्न संशयः ।

[3] Aṅgiras—

गोरसं चैव सक्तूंश्च तैलं पिण्याकमेव च । अपूपान् भक्षयेच्छूद्राद् यच्चान्यत् पयसा कृतम् ।

Hārīta—कन्दुपक्वं स्नेहपक्वं पायसं दधिसक्तवः । एतानि शूद्रान्नभुजो भोज्यानि मनुरब्रवीत् ॥
On this Vīra-Mitr. comments—कचित्तु अशूद्रान्नभुज इति पाठः । तत्र शूद्रस्य जलाग्निपक्वं यो नाश्नाति तेनापि भोज्यमित्यर्थः ।

But the prohibition of *Śūdra*-cooked food which is enjoined by the Kalivarjya text is not wholly accepted by the writers of the digests. *Aparārka* on Yāj. I. 166 after citing the verses of *Hārīta* and *Manu* says that seven kinds of cooked foods may be eaten by others and after specifying them concludes thus: The favour of eating cooked food from *Śūdras* should be regarded as relating to a condition of distress only. *Mitākṣarā* does not seem to know the ban on eating the food of *Śūdras*.[1] Nor does *Maskari* know it. *Vijñāneśvara* does not refer to the long list of Kali prohibitions and in particular to this prohibition in the matter of eating although cow-sacrifice, appointment of a wife and mixed marriage are declared by him as obsolete. *Smṛtyarthasāra* which first gives the long list prescribes penance in the form of fasting and taking the five things of the cow upon eating *Śūdra*-cooked food.[2] *Raghunandana* in his *Śūdra-kṛtyatattva* also does not literally accept the prohibition. After citing the *Kūrmapurāṇa* passage, he says that in Śrāddhas it is proper to serve cooked food of the fried kind to *Brahmins*.[3]

Vīramitrodaya distinguishes between *Śūdras* worthy and *Śūdras* unworthy and holds the interdiction of *Śūdra*-cooked food to apply to the latter, and in regard to the former he holds the prohibition to refer to 7 kinds of cooked food

Atri—आरनालं तथा क्षीरं कन्दुकं दधिसक्तवः। स्नेहपक्वञ्च तक्रञ्च शूद्रस्यापि न दुष्यति ॥
Also Parāśara, XI. 14, 18. Kūrma Purāṇa—

कन्दुपक्वानि तैलेन पायसं दधिसक्तवः। द्विजैरेतानि भोज्यानि शूद्रगेहकृतान्यपि ॥

—Raghunandana cites the text in Śūdrakṛtyatattva.

[1] एते दासादयः शूद्राणां मध्ये भोज्यान्नाः, चकारात् कुम्भकारश्च, गोपनापितकुम्भकारकुलमित्रार्द्धसीरिणो निवेदितात्मानो भोज्यान्ना इति वचनात्।

[2] शूद्रं च पक्वं वामेध्यसेविकीटोपहतं च भुञ्जाने शूद्रस्पर्शे······उपवासं पञ्चगव्यञ्च कुर्य्यात्।

[3] शूद्रकर्त्तृक-कन्दुपक्वादेर्ब्राह्मणभक्ष्यत्वेन श्राद्धे देयत्वं युक्तम्। He adds—दिनत्रयोदशे प्राप्ते पाकेन भोजयेद्द्विजान्। अयं विधिः प्रयोक्तव्यः शूद्राणां मन्त्रवर्जितः ॥ इति श्राद्धचिन्तामणिकृत-वराहपुराण-वचनमपि कन्दुपक्वपरम्। एवन्तु एतद्वचनं सच्छूद्रपरम् मैथिलोक्तम् हेयम्।

only[1] The position of *Kalpataru* is similar. The *Mādhavīya* and *Madana-pārijāta* require the servant, cow-herd, family friend, etc., to be worthy *Śūdras*.

Actual usage in modern times amongst the orthodox also shows that the Kalivarjya text is not strictly observed. In Upper India barbers serve the food bought from confectioners at feasts given to *Brahmins*. As regards this particular item orthodox practice follows usages handed down from the past without strict regard to the prohibitive text and varies in different provinces.

Giving of Tasted Remainder to a Pupil

The practice referred to had become so obsolete in the time of the digest-writers that the precise significance of this title is missed by some and disputed by others. In *Āp. Gr. S.* V. 13 the origin of the practice may be detected. The guest to whom the honey-mixture (*madhuparka*) was offered might give the remainder after he had partaken of it to one to whom he was kindly disposed—*i.e.*, to his son or his brother returned from the preceptor's house.[2] But whether it could be given to a student still observing his vows is discussed by *Āpastamba* in his *Dharma-sūtra Praśna* I *Kaṇḍikā* IV: The pupil shall eat of the tasted food. For it is like the remainder of an oblation. But he

[1] सच्छूद्रातिरिक्तानामपि दासगोपालादीनाम् आपदि पक्वान्नमपि ग्राह्यम्। अनापदि त्वाममेव। दासाद्यतिरिक्तानां त्वसच्छूद्राणामापद्येकरात्रिकमाममेव ग्राह्यमिति व्यवस्था। कल्पतरु-स्वरसोऽप्येवम्। माधव-मदनपारिजातयोस्तु दासादीनामपि सच्छूद्राणामेव भोज्यान्नत्वमुक्तम्। नाद्याच्छूद्रस्येति मनुवाक्यैकवाक्यत्वात्। योऽपि च शूद्रपक्वान्नभोजननिषेधः सोऽपि कतिपयपक्वान्न-व्यतिरिक्त-विषयः।

[2] उत्तराभ्यामभिमन्त्र्य यदुर्ध्वाम् अप आचामति पुरस्तादुपरिष्टाच्चोत्तरस्यां विः प्राश्य अनुकम्पाय प्रयच्छेत्। Haradatta explains—शेषं मधुपर्कप्राशनशेषम् अनुग्राह्याय पुत्राय भ्रात्रे वा समावृत्ताय एव प्रयच्छेत्। सोऽपि एतं प्राश्नाति। सोमभक्षणे मधुपर्कप्राशने भोजने च मध्ये नोच्छिष्टा इति शिष्टाः स्मरन्ति।

must not be given the remainder of any food forbidden by the *Śruti*, such as, salt, honey, meat, etc. By this, other rules (such as giving of remainder of ointments, scents, garlands, etc.) are to be gathered. But the objection that such was the usage is met by the greater force of *Śruti* over a practice giving rise to an inferential text. For the reason of the practice is evident which is an affectionate or kindly feeling. The leavings of a father's or an elder brother's repast should be eaten except where it is opposed to the sacred law governing the conduct of a student.[1] *Kamalākara* chooses to read the title so as to mean abstaining from acceptance of gifts according to *Manu's* praise of such (IV. 186) on the part of learned *Brahmins*.[2] But the prohibition of such conduct praised by *Manu* can hardly be contemplated by the Kalivarjya texts considering their general tenour (*e.g.*, prohibition of inferior avocations in distress).

Stay-away from Home

The origin of the prohibition is traceable to *Āpas. Śr. Sūtra* and seems to have been due to the necessities of tending the sacred fires. Stay-away from home is described as caused by pleasure or secular purpose (*Ibid.*, *Praśna* VI. *Kaṇḍikā* 28).[3] *Pr.* IV. *Kaṇ.* 16. enjoins that while sojourning away from home the sacrificer has to make the offerings mentally at the right time with his face turned

[1] Āp. Dh. S., I. 14. 1-2—यदुच्छिष्टं प्राश्नाति हविरुच्छिष्टमेव तत्। 5—न चास्मै श्रुतिविप्रतिषिद्धम् उच्छिष्टं दद्यात्। 6—यथा क्षारलवणमधुमांसानीति। 7—एतेनास्य नियमाः व्याख्याताः। 8—श्रुतिर्हि बलीयस्यानुमानिकादाचारात्। 9—दृश्यते चापि प्रवृत्तिकारणम्। 10—प्रीतिर्ह्युपलभ्यते। 11—पितुर्ज्येष्ठस्य च भ्रातुरुच्छिष्टं भोक्तव्यम्। 12—धर्मविप्रतिपत्तावभोज्यम्।

[2] उच्छिष्टस्य त्यक्तस्य वर्जनं "प्रतिग्रहसमर्थोऽपि" इत्युक्तम्। प्रतिग्रहसमर्थोऽपि प्रसङ्गं तत्र वर्जयेत्। प्रतिग्रहेण ह्यस्याशु ब्राह्मं तेजः प्रशाम्यति।

[3] प्रवासो रागप्राप्तः।

homeward.[1] *Kātyāyana Saṃhitā* XIX. 1-2; A Brahmin who tends the sacred fires may on unavoidable business go away from home leaving the fire in the care of his wife and after having engaged a priest, but never long without such business. While away from home he shall meditate at the proper hours on his daily duties, being clean and seated.[2] *Devanna Bhaṭṭa* (in *Sm. C.*, *Āhnikakāṇḍa*, pp. 575-76) quotes verses from *Kātyāyana Pariśiṣṭa* showing the imperative character of the *Vaiśvadeva* rites.[3] Living away from home was fraught with many evils and dangers in former times (see Section on Widow-remarriage), one of the subjects regularly treated in the Digests being the duties of a wife whose husband is absent from home. From the text of *Kātyāyana Dāmodara* argues that long stay-away is prohibited. *Anantadeva* understands by *pravāsa*—residence in the preceptor's house (which is otherwise forbidden) and supports his construction on the ground of presumption of one *Śruti* text to cover both and a passage in which the word is used with the same meaning.[4] This is evidently a forced construction.

The Householder's Distant Pilgrimage

This topic is akin to the preceding one. Visiting sacred places is prescribed in *Viṣṇu Smṛti* Ch. LXXXV. And the *Purāṇas* (e.g., *Brahma*, *Skanda*, etc.), are replete with accounts of the different holy places and praises of the merit accruing from pilgrimage to them. A general prohibition of such pilgrimage would conflict with these teachings.

[1] प्रवसन् काले विहाराभिमुखं याजमानं यजति । IV. 16-18.

[2] निक्षिप्याग्निं स्वदारेषु परिकल्प्यर्त्विजं तथा । प्रवसेत् कार्य्यवान् विप्रो वृथैव न चिरं क्वचित् ॥
मनसा नैत्यकं कर्म्म प्रवसन्नप्यतन्द्रितः । उपविश्य शुचिः सर्व्वं यथाकालमनुद्रवेत् ॥

[3] प्रवसेदाहिताग्निश्चेत् कदाचित् कालपर्य्ययात् । यस्मिन्नग्नौ भवेत् पाको वैश्वदेवस्तु तत्र वै ॥
तत्राहुत्वा च यो भुङ्क्ते स भुङ्क्ते किल्बिषं नरः । प्रोषितोऽप्यात्मसंस्कारं कुर्य्यादेवाविचारयन् ॥

[4] द्वाविमौ ग्रसते भूमिः सर्पो बिलशयानिव । राजानं चाप्ययोद्धारं ब्राह्मणं चाप्रवासिनम् ॥
Mbh. II. 55.14.

Hence *Dāmodara* citing a text from *Satyavrata Smṛti* lays stress on the word *gṛhastha* meaning the *Brahmin* tending the sacred fires in whose case only the prohibition applies.[1] *Anantadeva's* interpretation is more plausible and suggests the insecurity of the times when India was occupied in parts by foreign invaders and in which pilgrimages to holy places on the borders of the country or beyond were not advisable.[2] Many digests pass in silence over or ignore this prohibition, *e.g.*, *Madana-pārijāta* or *Nirṇayasindhu*.

Vānaprastha and Sannyāsa

Like Agnihotra, Sannyāsa is prohibited by the four texts of Nigama, Laugākshi, Vyāsa and Devala. The authority and scope of this ban are variously understood. *Vaikhānasa Gṛhya-Sūtra* VIII. 9 says that ascetics seeking salvation are of four kinds—Kuṭīcaka, Bahūdaka, Haṃsa, and Paramahaṃsa. Of these, the first dwells in the hermitages of Gautama, Bharadvāja, Yājñavalkya, Hārīta and the like and go round eight villages for begging and are proficient in Yoga. The second class carrying the three Daṇḍas (the staff of three sticks), the water-vessel (Kamaṇḍalu), ochre robes, dwells in the homes of the Brahmarṣis and other saints, giving up meat and salt and stale food and beg from seven houses. The Haṃsa stays for a night only in villages and for five nights in towns but not longer, feeds on the excrements of cows or fasts by the month and daily performs the *Cāndrāyaṇa* penance. The Paramahaṃsa dwells under trees or in deserted habitations or in the cremation-ground and is either clothed or naked. They are above the duality of piety and impiety, truth and untruth, purity and impurity,

[1] धनान्यर्जयितुं युक्तः प्रवासो ह्यग्निहोत्रिणः। धनैर्यत् सम्भवेदिज्या तीर्थार्थं न तु व्रजेत् ॥ इति सत्यव्रत-स्मरणात्।

[2] या च प्रत्यन्तदेशगत-तीर्थयात्रा पौराणी सा कलौ नेति।

equal to all, one with all, regarding brick-bats and lumps of gold with an equal eye, and beg from men of all castes. According to the *Āśramopaniṣad* of the *Atharvaveda*, the Kuṭīcakas seek the spirit and practise begging at the houses of their sons.[1] *Manu* VI. 95 also says that they live upon the substance of their sons.

The motive of these ascetics is only one, that is, spiritual salvation, and hence they differ essentially from monks living under an organised system or vowed to social service like the Buddhist Bhikkhus. Theirs was a life of study, loneliness and rigour—based on a true spirit of renunciation and distaste for the attractions of life. The Yatis had always to be on the move, had to keep aloof from society and the haunts of men. They were not to live in groups among themselves.[2] From the passage quoted above, the Bahūdaka carried a *tri-daṇḍa* and the Haṃsa a staff of one stick or *eka-daṇḍa*, the others bear no mark or appendage of asceticism.

Vaik. Gṛ. Sūtra VIII. 1 says that for the Brāhmaṇa there are four stages of life, for the Kshatriya the first three, and for the Vaiśya two only. A *Vṛddha-Yājñavalkya* text quoted in the *Nirṇaya-Sindhu* says the same and so also *Manu.*[3] But there was another view also, *viz.*, that the four orders

[1] कुटीचकाः स्वपुत्रगृहेषु भिक्षाचर्य्यं चरन्तः आत्मानं प्रार्थयन्ते। Manu, VI. 95—पुत्रैश्वर्य्ये सुखं वसेत्।

[2] अष्टौ मासान् विहारः स्याद यतीनां संयतात्मनाम्। महाक्षेत्रप्रविष्टानां विहारस्तु न विद्यते॥ वृथाजल्पं पात्रलोभं सञ्चयं शिष्यसंग्रहम्। हव्यं कव्यं तथान्नञ्च वर्ज्जयेच्च सदा यतिः॥ न तीर्थवासी नित्यं स्यान् नोपवासपरो यतिः। न चाध्ययनशील: स्यान्न व्याख्यानपरो भवेत्॥ Dakṣa—एको भिक्षुर्यथोक्तस्तु द्वौ चैव मिथुनं स्मृतम्। त्रयो ग्रामस्तथा ख्याता ऊर्द्ध्वं तु नगरायते॥ Devala—सर्व्वसङ्गपरित्यागी यतिर्यदि मठाधिपः। तस्यैव निष्कृतिर्नास्ति चाण्डालाज्जनगर्हितात्॥

[3] Yāj.—quoted in Nirṇayasindhu—चत्वारो ब्राह्मणस्योक्ता आश्रमाः श्रुतिचोदिताः। क्षत्रियस्य त्रयः प्रोक्ता द्वावेको वैश्यशूद्रयोः॥ Manu—एष वो विहितो धर्म्मो ब्राह्मणस्य चतुर्व्विधः।

were open to all the three regenerate castes. *Kāṭhaka Gṛhya* quoted in the *Vīramitrodaya* is of this view, also a text of the *Kūrmapurāṇa* cited in the *Nirṇaya-sindhu*.[1] The great Śaṅkarācārya held the former view although his disciple Sureśvara differed from his master.[2]

Again Sannyāsa is distinguished into *Vidvat* and *Vividiṣā* and *Dharma-sindhu* giving the modern *Smārta* view says that the former is open to Kṣatriyas and Vaiśyas also.[3] Further the four kinds of Sannyāsin mentioned above fall into two classes according as the staff they carry is made of three sticks or one. *Nirṇaya-sindhu* cites texts to show that the Kuṭīcaka and the Bahūdaka carried a *tri-daṇḍa* and the other two *eka-daṇḍa*.[4]

Under the Brāhmaṇic scheme the main stress lay all

[1] Kāṭh. Gṛ.—त्रयाणां वर्णानां चत्वार आश्रमाः ।—Vīr. Mit.—संस्कारप्रकाश। Kūrma Purāṇa—ब्राह्मणः क्षत्रियो वाथ वैश्यो वा प्रव्रजेद् गृहात्—इति कौर्म्माद्युक्तेः वर्णत्रयस्याधिकारः ।

[2] *Vide* Bṛhadāraṇyaka-Bhāṣya-Vārttika—88, 89, 191—Ch. III. Brah. v—अधिकारिविशेषस्य ज्ञानाय ब्राह्मणग्रहः । न संन्यासविधिर्यस्मात् श्रुतौ क्षत्रिय-वैश्ययोः ॥

त्रयाणामविशेषेण संन्यासः श्रूयते श्रुतौ । यदोपलक्षणार्थं स्याद् ब्राह्मणग्रहणं तदा ॥

इमामवस्थां संप्राप्य सर्व्वो ब्राह्मण उच्यते । ब्राह्मण्यं गौणमन्यत्र पूर्व्वभूमिषु नाञ्जसा ॥

[3] संन्यासे दण्डग्रहणादिरूपे विप्रस्यैवाधिकारः । विद्वत्संन्यासे तु क्षत्रियवैश्ययोरपि ।

[4] प्रथमद्वितीयौ त्रिदण्डौ, तृतीयचतुर्थौ एकदण्डौ । स्कान्दे—एकन्तु वैणवं दण्डं धारयेन्नित्यमादरात् । विष्णुरपि—यज्ञोपवीतं वस्त्रञ्च दण्डं जन्तुनिवारणम् । तावान् परिग्रहः प्रोक्तो नान्यो हंसपरिग्रहः ॥ स्कान्देऽपि—परमहंसस्त्रिदण्डं च रज्जुं गोबालनिर्म्मिताम् । शिखां यज्ञोपवीतञ्च नित्यं कर्म्म परित्यजेत् ॥ अयमप्येकदण्ड एव । यत्तु मेधातिथिः—यावन्न सुस्त्रयो दण्डास्तावदेकेन वर्त्तयेत्—इति तदपि तत्परमेव । यच्चात्रिः—चतुर्धा भिक्षवः प्रोक्ताः सर्व्वे एव त्रिदण्डिनः इति तद् वाग्दण्डादिपरं न यष्टिपरम् । तस्मात् परमहंसस्य एकदण्ड एव । सोऽपि अविदुषः । विदुषस्तु सोऽपि नास्ति ।

कठरुद्रोपनिषत्—कुण्डिकां चमसं शिक्यं त्रिविष्टपमुपानहौ ।

शीतोपघातिनीं कन्थां कौपीनाच्छादनं तथा । यज्ञोपवीतं वेदांश्च सर्व्वं तद् वर्ज्जयेद् यतिः ॥

Also Hārita, VI. 6—त्रिदण्डं वैणवं सम्यक् सन्ततं समपूर्व्वकम् ।

वेष्टितं कृष्णगोबालरज्जुमच्चतुरङ्गुलम् ॥

along on the house-holder's life.[1] The two later stages Vānaprastha and Sannyāsa were intended for those specially fitted for them by the ascetic impulse of their nature. Thus *Āpastamba* says that there are four orders, each of which properly pursued leads to salvation.[2] He favours all the four Āśramas while *Baudhāyana* II. vi. regards the house-holder's life as the most important and declares that the division into four orders was made by an *Asura*.[3]

Gautama (Ch. III) says that after the life of studentship one has the option of being a Brahmacārin, a house-holder, a Bhikṣu or a Vaikhānasa. Of these the house-holder is the sole support for the others leave no issue. The importance of the second order is brought out by the *Vīramitrodaya* in its comments on Gautama Sūtra.[4] *Vasiṣṭha* like-wise declares that the house-holder performs all sacred rites and duties.[5]

Traces of this line of thought are scattered over the *Smṛtis*. Thus *Manu* says in VI. 37 that the seeking of salvation

[1] Vasiṣṭha, VIII—यथा मातरमाश्रित्य सर्व्वे जीवन्ति जन्तवः। एवं गृहस्थमाश्रित्य सर्व्वे जीवन्ति भिक्षुकाः। Ascribed to Manu by Mallinātha on Raghuvaṃśam, V. 10.

[2] चत्वार आश्रमाः * * तेषु सर्व्वेषु यथोपदेशमव्यग्रो वर्त्तमानः क्षेमं गच्छति। Āp. Dh. S.

[3] एकाश्रम्यं त्वाचार्य्या अप्रजननत्वादितरेषाम्। 29—तत्रोदाहरन्ति—प्राह्लादिर्ह वै कापिल नामासुर आस। स एतान् भेदांश्चकार देवैः सह स्पर्द्धमानः। तान् मनीषी नाद्रियेत। अदृष्ट-त्वात्। ये चत्वार इति कर्म्मवाद ऐष्टिक-पाशुक-सौमिक-दार्वी होमानाम्। (29-34)

[4] तुशब्दो विशेषवाची सर्व्वेषु वेदशास्त्रेतिहासपुराणेषु गृहस्थधर्म्मा एवाग्निहोत्रादयः प्राचुर्य्येण विधीयन्ते। ततः सर्व्व एव आचार्य्याः गृहस्थस्य एकाश्रम्यं प्राधान्यं मन्यन्ते। तत्रापि अशक्तानाम् इतराश्रमधर्म्मो विधीयते प्रत्यक्षविधानादितराप्रामाण्यं प्रत्यक्षेण उपजीव्यत्वात्।—on Gautama (Ch. III, end)—एकाश्रम्यं त्वाचार्य्या प्रत्यक्षविधानात् गार्हस्थ्यस्य।

[5] गृहस्थ एव यजते गृहस्थस्तप्यते तपः।
चतुर्णामाश्रमाणान्तु गृहस्थस्तु विशिष्यते॥—Vas. VIII.

without the study of the Vedas, the begetting of sons and the performance of sacrifices leads a man downward. The Gṛhastha supporting the other three orders is the best, in him men of all the orders find shelter like streams in the ocean (89-90).[1]

Viṣṇu LIX. 28-29 echoes the same sentiments, also *Yājñavalkya* III. 205 and *Vyāsa* IV. ii.[2]

The first two descriptions of Sannyāsins had a more or less fixed habitation. The Kuṭīcaka lived on the means of life supplied by his son. The Bahūdaka dwelt in holy places where the sages of old had their seats and did not move away from these. According to the distinction made by the writers of the Digests, it is these two varieties that are prohibited in the present age, possibly because they are not inspired by the highest spirit of renunciation.[3] The emphasis is laid on the true ascetic spirit to which this stage or order of life is still open. The objection is to ascetics who

[1] अनधीत्य द्विजो वेदाननुत्पाद्य तथा सुतान्। अनिष्ट्वा चैव यज्ञैश्च मोक्षमिच्छन् व्रजत्यधः। (37) सर्व्वेषामपि चैतेषां वेदस्मृतिविधानतः गृहस्थ उच्यते श्रेष्ठः स त्रीनेतान् विभर्ति हि। (89) यथा नदीनदाः सर्व्वे सागरे यान्ति संस्थितिम्। तथैवाश्रमिणः सर्व्वे गृहस्थे यान्ति संस्थितिम्। (90)

[2] गृहस्थ एव यजते गृहस्थस्तप्यते तपः। ददाति च गृहस्थस्तु तस्माज्ज्येष्ठो गृहाश्रमी॥
ऋषयः पितरो देवा भूतान्यतिथयस्तथा। आशासते कुटुम्बिभ्यस्तस्माज्ज्येष्ठो गृहाश्रमी॥

Viṣṇu, LIX, 28-29—

न्यायागतधनस्तत्त्वज्ञाननिष्ठोऽतिथिप्रियः।
श्राद्धकृत् सत्यवादी च गृहस्थोऽपि हि मुच्यते॥

Yājñavalkya—

गृहाश्रमात् परो धर्म्मो नास्ति नास्ति पुनः पुनः।

Vyāsa, IV, 2—

सर्व्वतीर्थफलं तस्य यथोक्तं यस्तु पालयेत्।

[3] Dakṣa Saṃhitā—

तस्मात्त्यक्तकषायेण कर्त्तव्यं दण्डधारणम्। इतरस्तु न शक्नोति विषयैरभिभूयते॥
विदण्डव्यपदेशेन जीवन्ति बहवो नराः। यो हि ब्रह्म न जानाति न त्रिदण्डार्हं एव सः।

Cf. Jābāla Śruti— विरज्येत तदहरेव प्रव्रजेत्। गृहाद्वा वनाद्वा।

despite the garb and appendages of the order lack the spirit. Hence *Vīramitrodaya* cites *Yama* to the effect that a dire hell awaits one who carries the staff but eats all and is without knowledge.[1] It also cites another anonymous *Smṛti* saying that many men carry the single staff as a means of livelihood but they go to hell by giving up their duties in life.[2] *Mitra-miśra* adds that the *Mahābhārata* text as to a Yati, whatever his garb, being fit to be honoured, should be understood in the same spirit *i.e.*, that honour should be given to a true ascetic be whatever, his outfit. *Madana-pārijāta*, pp. 365-373 after setting forth the arguments[3] in favour of the eligibility of Kṣatriyas and Vaiśyas for the fourth order gives its own opinion in favour of the Brahmin alone being so entitled.[4]

Smṛti-muktāphala a Deccanese digest reconciles the texts by saying that the prohibition relates to the wearing of the coloured robe and the carrying of the staff.

It mentions the cases of *Appaya Dīkṣita* and *Dharmarājādhvarīndra* among the performers of Agnihotra and Sannyāsa. To this may be added the names of Śaṅkara, the reputed founder of a powerful monastic order—the Daśnāmī—and his disciples who have succeeded to the four seats created by him, *i.e.*, Śāradā, Joshī, Govardhana and Śṛṅgeri. Amongst the Sādhus of the Daśnāmī order founded by him there are men of all the three castes—one of the *Maṇḍaleśvaras* at Benares at this date being a Vaiśya.

The prohibition of Sannyāsa may have been due to a reaction against Monachism brought about by irregularities

[1] काष्ठदण्डो धृतो येन सर्व्वाशी ज्ञानवर्जितः। स याति नरकान् घोरान् महारौरवसंज्ञितान् ॥

[2] एकं दण्डं समाश्रित्य जीवन्ति बहवो नराः। नरके रौरवे घोरे कर्म्मत्यागात् पतन्ति ते ॥

[3] एकदण्डी त्रिदण्डी वा शिखामुण्डित एव वा। काषायमात्रसारोऽपि यतिः पूज्यो युधिष्ठिर ॥

[4] लिङ्गनिषेध एव न त्वाश्रमनिषेध इति। दण्डधारणम् बहिरङ्गं विषयविराग एव मुख्यः, विरागाभावे अधिकाराभावात्। * * क्षत्रियवैश्ययोर्दण्डग्रहणमात्रनिषेधो न त्वाश्रमनिषेध इति। p. 367.

in the lives of Buddhist monks as evidenced by the Pātimokkhas. But despite academic objections to the competency for Sannyāsa in the present age, the vogue still continues unfettered by the Kalivarjya ban.

Suicide From Pious Motive

The practice of suicide in extreme old age or in decrepitude due to disease may in its origin be traced to Vedic times. Exposure of the aged has been inferred from certain passages (*Ṛg Veda* VIII. 51. 2 and *Atharva Veda* XVIII. 2. 34). Some, however, argue that the exposure was of dead bodies after the Parsi fashion. But considering the persistence of usages which have their source in the Vedas and the prevalence of suicide from pious motive, it is reasonable to construe the texts as evidence of such usage. In later times the practice was regularly enjoined by works of sacred law.[1] In the *Mahābhārata* examples of the observance of this practice are found. *Manu* (VI. 31-32)[2] prescribes it for a person in the third order; so also does *Atri*. A text quoted by *Kṛṣṇam Bhaṭṭa* in his commentary on *Nirṇaya-sindhu* is to the same effect. Self-immolation was also prescribed as a penance for heinous offences. It seems that doubts sometimes arose as to whether this form of suicide was approved or not.[3] Those who failed of death

[1] Manu, VI. 31-32—

अपराजितां वास्थाय व्रजेद्दिशमजिह्मगः । आनिपाताच्छरीरस्य युक्तो वार्य्यनिलाशनः ॥

आसां महर्षिचर्य्याणां त्यक्त्वान्यतमया तनुम् । वीतशोकभयो विप्रो ब्रह्मलोके महीयते ॥

Atri, 214—

वृद्धः शौचस्मृतेर्लुप्तः प्रत्याख्यात-भिषक्क्रियः ।

आत्मानं घातयेद यस्तु भृग्वग्न्यनशनाम्बुभिः ॥ तस्य त्रिरात्रमाशौचं द्वितीये त्वस्थिसञ्चयम् ।

[2] यो जीवितुं न शक्नोति महाव्याध्युपपीड़ितः । सोऽग्न्युदकमहायात्रां कुर्व्वन् वा न प्रदुष्यति ॥

[3] यः कामतो नरः कुर्य्यान्महापापं कथञ्चन । न तस्य निष्कृतिर्दृष्टा भृग्वग्निपतनादृते ।

in carrying out a resolve of this sort were subjected to a penance as is enjoined by *Yama* (Śls. 2-3).[1]

A universal tradition describes that *Bhaṭṭa Kumārila* burnt himself to death in slow fire which shows that the usage still prevailed in the seventh century. It continued to a much later date. *Vijñāneśvara* (on Yāj. III. 6) quotes the text of *Atri* anonymously to show that the ordinary exequial rites were to be performed for these decrepit foresters. *Aparārka's* commentary on the same śloka quotes long passages from the *Ādipurāṇa* extolling the merit resulting from such self-immolation.[2] Also, high merit attached to death in this manner at sacred places like Prayāga or Kāśī and at Vṛddhatīrtha or Agnitīrtha.[3] The very names suggest that such deaths regularly occurred at these places. Other texts are quoted in the same work declaring that journey over snow-clad mountains with the object of departing this life conduces to the attainment of Heaven.[4] Raghunandana construes the Kalivarjya text (XI, XLVI) to the effect that although prohibited in the case of the twice-born classes, the practice may be observed by Śūdras even in this age.[5] *Vīramitrodaya* ascribes the origin of pious suicide to heretical scripture (p. 206).

Begging From All Classes

In the earliest Vedic society Brahmins in the fourth order of life were permitted to beg from men of the four

1 जलाग्न्युद्बन्धनभ्रष्टाः प्रव्रज्यानशनच्युताः। विषप्रपतनप्रायशस्त्रघातच्युताश्च ये॥
सर्व्वे ते प्रत्यवसिताः सर्व्वलोकबहिष्कृताः। चान्द्रायणेन शुध्यन्ति तप्तकृच्छ्रद्वयेन वा॥

2 उत्तमान् प्राप्नुयाल्लोकान् नात्मघाती भवेत् क्वचित्। महापापक्षयात् स्वर्गे दिव्यान् भोगान् समश्नुते।

3 वृद्धतीर्थादीनि काश्मीरदेशे नौबन्धनगिरेर्मूले विज्ञेयानि।

4 महाप्रस्थानयात्रा च कर्त्तव्या तुहिनोपरि। आश्रित्य सत्त्वं धैर्य्यञ्च सद्यःस्वर्गप्रदा च सा॥

5 जलप्रवेशादिकन्तु कलौ शूद्रस्यैव। ब्राह्मणादीनान्तु आदित्यपुराणेन सगुणाद्यशौचप्रकरणोक्तेन निषेधात्।—Ṣuddhi-tattvam, p. 285.

varṇas. *Kāṭhaka Brāhmaṇa* so lays down the rule, also *Maitrāyaṇī*[1] and *Āruṇi Upaniṣads*.[2] So also, *Baudhāyana*.[3] The practice is sanctioned by *Yama* also as cited in *Smṛti-Muktāphala*.[4] A text of Parāśara in prose (*op. cit.*) says that Yatis stay for one night in villages and five nights in towns and *Tīrthas* and with their stomachs as their begging-bowls, beg from all the four *varṇas* excepting reprobates and the fallen, and attain steady self-realisation.[5] But there was a tendency from early times to restrict the begging to the regenerate classes and preferably still to Brahmins. Thus *Vasiṣṭha* says (Ch. X): He shall eat that which he gains from a Brahmin family.[6] Begging from the three twice-born castes is enjoined in certain texts cited in *Smṛti-Muktāphala*.[7] *Baudhāyana* (*op. cit.*) says that he should obtain food from worthy Brahmins, Kṣatriyas and Vaiśyas, failing the first from the other two, one after another. Failing all three and not eating two meals, he may

[1] भिक्षार्थं ग्रामं प्रविशेत्। आसायं प्रदक्षिणेन अविचिकित्सन् सार्व्ववर्णं भैक्ष्यचरणं अभिशस्त-पतितवर्जम् (cited in Smṛti-Muktāphala). Kāṭhaka Brāhmaṇa—चतुर्ष्वर्णेषु भैक्ष्य-चर्य्यं चरेत्। पाणि-पात्रेषु अशनं कुर्य्यात्। औषधवत् प्राश्नीयात्। प्राणसन्धारणार्थं यथा मेदोवृद्धिर्न जायते।

[2] यतयो भिक्षार्थं ग्रामं प्रविशन्ति पाणिपात्रं उदरपात्रं वा (*op. cit.*)

[3] भैक्ष्यं वा सर्व्ववर्णेभ्य एकान्नं वा द्विजातिषु।
अपि वा सर्व्ववर्णेभ्यो न चैकान्नं द्विजातिषु॥—II. x. 69.

[4] यश्चरेत् सर्व्ववर्णेषु भैक्ष्यमभ्यवहारतः।
न स किञ्चिदुपाश्नीयात् यावद् भैक्ष्यमिति स्थितिः॥

[5] ग्रामैकरात्रवासिनो नगरतीर्थावसथेषु पञ्चरात्रवासिनः उदरपात्रिणः अभिशस्तपतितवर्जं चातुर्वर्ण्यं भैक्ष्यं चरन्तः आत्मत्वेन अवतिष्ठन्ते।

[6] ब्राह्मणकुले यल्लभेत तद् भुञ्जीत।

[7] त्रिषु वर्णेषु एकागारं भैक्ष्यमश्नीयात्—Maitrāyaṇī (?) Śruti. त्रिषु वर्णेषु भिक्षाचर्य्यं चरेत्—Sannyāsopaniṣat.

ब्राह्मणक्षत्रियविशां मेध्यानामन्नमाहरेत्। असम्भवे तु पूर्व्वस्य आददीतोत्तरोत्तरम्॥
सर्व्वेषामसभावे तु भक्तद्वयमनश्नतः। भैक्ष्यं शूद्रादपि ग्राह्यं रक्ष्याः प्राणा द्विजन्मना।

also beg from Śūdras for life has to be maintained by the enlightened. The conclusion of the writer of this digest of the South is that begging from all the *varṇas* is permissible only in distress.

Lodging where Night Falls

The usage referred to in the title is met with in connection with both Brahmacārins and anchorites (*Parivrājakas* in *Baudhāyana's* and *Āpastamba's* nomenclature).[1] The latter are to beg in ochre robes when the pestle and mortar have been laid aside, the fire gone out in the oven and the plates have ceased to be laid, *i.e.,* in the evening.[2] So also *Vasiṣṭha.*[3] To lodge and feed him was a duty incumbent on the house-holder. (*Vyāsa* III. 70, *Śaṅkha* VII. 2).[4] In *Uśanas,* VIII the Brahmin-slayer is enjoined to practise Mahāvrata for 12 years begging in the evening like a Yati. The Yati as a guest had to be honoured and entertained.[5] *Vide Hārīta* IV. 56; *Dakṣa* VII. 44-47; also *Viṣṇupurāṇa* Part III. Ch. IX. 13-14.[6] Here the guests in the evening are Brahmins (house-holders or students celibate) who wander

[1] ब्रह्मचारी गृहस्थो वानप्रस्थः परिव्राजकः।—Baudh. II. vi. 17. परिव्राजः—Āp. Dh. S. II. ix. 7.

[2] काषायवासाः सन्नमुसले व्यङ्गारे निवृत्तशरावसम्पाते भिक्षेत। Baudh. II. iv. 24.

[3] सप्तागाराणि असंकल्पितानि चरेद् भैक्ष्यं विधूमे सन्नमुसले। Vas. X.

[4] विधूमे सन्नमुसले व्यङ्गारे भुक्तवज्जने अतीते पादसम्पाते नित्यं भिक्षां यतिश्चरेत।

—Śaṅkha, VII. 2 ; also Manu, VI. 56.

[5] वेदाहरणकार्य्येण तीर्थस्नानाय च प्रभो। अटन्ति वसुधां विप्राः पृथिवीदर्शनाय च॥

तेषां स्वागतदानादि वक्तव्यं मधुरंनृप। गृहागतानां दद्याच्च शयनासनभोजनम्॥

[6] सायमतिथिं प्राप्तं प्रयत्नेनार्च्चयेत्।—Viṣṇu Saṃ., Ch. LXVII, Śl. 45.

सायंप्रातस्त्वतिथये प्रदद्यादासनोदके। अन्नञ्चैव यथाशक्ति संस्कृत्य विधिपूर्व्वकम्।

प्राणयात्रानिमित्तञ्च व्यङ्गारे भुक्तवज्जने। काले प्रशस्तवर्णानां भिक्षार्थं पर्य्यटेद् गृहान्॥

—Viṣṇupurāṇa, III. 67. 29.

either to collect the Vedas or to visit holy places or to observe the world.

According to *Pṛthvīcandrodaya* the usage sanctioned in *Viṣṇupurāṇa* III. 13-14 is prohibited in the Kali age. Hence, says *Kamalākara*, travellers of unknown birth and conduct, etc., are not to be employed in *Śrāddhas* and such other functions.[1] *Anantadeva* says that the stay of Bhikshus in the houses of house-holders which they have entered for begging, etc., in the afternoon, is forbidden for the *Śruti* says—He shall enter the village before sunset.[2]

Ceremonial Sipping of Cow-drunk Water

Ācamana or purificatory sipping of water taken from the earth in a natural state is now a forbidden usage which prevailed in ancient times. Such Ācamana is permitted by *Baudhāyana* (I. 4. 57).[3] *Manu* has the same provision almost in the same words, so also *Viṣṇu* and *Vyāsa* and *Bṛhaspati* quoted in *Madana-pārijāta*, p. 464.[4] *Yājñavalkya's* śloka[5] on the same is thus explained by *Aparārka*: Such

[1] पृथ्वीचन्द्रोदयेन तु विष्णुपुराणोक्तो निषिद्धः। तेन अज्ञातकुलशीलपान्थादिः श्राद्धादौ विनियोगो न कार्य्यः।

[2] सायंशब्दः प्रदोषवाचकः। प्रदोषान्तो होमकाल इति होमाङ्ग-सायंकालस्य आश्वलायनेन विवरणात्। अतएव श्रुतिः—ग्रामं प्रविशेदासायम् इति।

[3] आपः पवित्रा भूमिगता गोतृप्तिर्यासु जायते। अव्याप्ताश्चेदमेध्येन गन्धवर्णरसान्विताः॥

—Baudh. I. v.

Cf. also—खलक्षेत्रेषु यद् धान्यं कूपवापीषु यज्जलम्।

अभोज्यादपि तद् भोज्यं यच्च गोष्ठगतं पयः॥

—cited by Vijñāneśvara.

[4] Manu, V. 128—आपः शुद्धा भूमिगता वैतृष्ण्यं यासु गोर्भवेत्।

अव्याप्ताश्चेदमेध्येन गन्धवर्णरसान्विताः॥

Viṣṇupurāṇa, XIII. 43—भूमिष्ठमुदकं पुण्यं वैतृष्ण्यं यत्र गोर्भवेत्।

अव्याप्तश्चेदमेध्येन तद्वदेव शिलागतम्॥

[5] शुचि गोतृप्तिकृत्तोयं प्रकृतिस्थं महीगतम्।—Yāj. I. 192.

as can quench the thirst of cows and is in a natural state, that is, has its natural colour, taste and smell—such water is pure and fit for ceremonial sipping. The continuance of the practice down to a late period is shown by a text of *Devala* of the some import quoted by *Vijñāneśvara*.[1] Neither this commentator nor *Aparārka* are aware of the ban on this ancient practice. Thus *Vijnāneśvara* says : This provision is for removing the impurity of water fallen on unclean soil and not for taking away the purity of sky-water (*i.e.*, rain-water) nor that of water stored up.[2] It also declares that there is nothing wrong in the use of water from tanks, etc., made by Caṇḍālas and other vile persons. The prohibition appears in the anonymous Kalivarjya text quoted in *Smṛti-candrikā*. *Madana-pārijāta* of a later date explaining the verses of Devala quoted above brings out the significance of the prohibition.[3]

Ten Days' Impurity For Rain-Water

This is connected with the previous topic and relates to a detail of ceremonial purification by sipping water. The provision for such practice occurs in *Āpas. Dh. S.* 1. 15. 2 : By sipping (pure) water that has been collected on the ground, he becomes pure. (4) He shall not sip rain-drops, (5) (He shall not sip water) from a (natural) cleft in the

1 अविगन्धा रसोपेता निर्मला: पृथिवीगता: ।
अक्षीणाश्चैव गोपानादाप: शुद्धिकरा: स्मृता: ॥
उद्धृत्य ता: प्रशस्ता: स्यु: शुद्धे पात्रे यथाविधि ।
एकरात्रोषितानान्तु त्यजेदाप: समुद्धृता: ॥

—Devala cited by Aparārka, I. 192.

2 अशुद्धभूगतस्याशुचित्वनिषेधार्थं न त्वन्तरीक्षोदकस्य शुद्धत्वव्यावृत्त्यर्थंनाप्युद्धृतस्य ।

3 ता इति सर्वनाम्ना गोतृप्तिमात्रपर्य्याप्ता: अल्पा एव ता: परामृश्यन्ते अतो बहूदकादिकृतानां रात्र्युषितानां न दोष: । तड़ागादिकृद्धृता अथापो रात्रावनुषितोदकान्तरसम्भवे अशुद्धा एव । तथा—
अक्षोभ्याणि तड़ागानि नदीवापीसरांसि च । चण्डालाद्यशुचिस्पर्शात्तीर्थत: परिवर्जयेत् ।

ground. On this *Haradatta* has the note: Some think that this *Sūtra* (4) is intended to forbid also the drinking of rain-water. Other commentators declare that according to this *Sūtra*, it is allowed to use for sipping drops of water which fall from a vessel suspended by ropes. But the meaning is made clear by other texts, such as an anonymous text quoted by the same commentator and also another in *Kṛṣṇa Bhaṭṭa's* commentary on *Nirṇaya-sindhu*.[1] It seems that rain-water collected and allowed to clear for three days during the rainy season was used for ceremonial washing. But in other seasons the period was ten days. This latter provision in regard to rain-water collected in other seasons is here abrogated. Manu says that cows, she-buffaloes and Brāhmin women in maternity are purified after ten nights as also rain-water collected on the ground[2] *Manu's* rule, therefore, has to be taken to apply to the same case. So that by the Kalivarjya text, the longer period of impurity is rescinded.[3] The prohibition of this archaic practice is first found in the text cited in Smṛti-candrikā.

Curtailment of the Period of Impurity

The rules regarding ceremonial impurity at birth or death have been reduced to a strictly graded system by the

1 श्रावणे मासि संप्राप्ते सर्व्वा नद्यो रजस्वलाः ।
त्रिदिनञ्च चतुर्थेऽह्नि शुद्धाः स्युर्जाह्नवी यथा ॥

Quoted by Haradatta—

काले नवोदकं शुद्धं न पिबेच्च त्र्यहन्तु तत् ।
अकाले तु दशाहं स्यात् पीत्वा नाद्यादहर्निशम् ॥

2 अजा गावो महिष्यश्च ब्राह्मण्यश्च प्रसूतिकाः ।
दशरात्रेण शुद्ध्यन्ति भूमिष्ठञ्च नवोदकम् ॥

Cited as Manu's text by Haradatta on Ap. Dh. S., I. xv. 2.

3 दशाहप्रतिषेधस्यापवादः । अन्यथा काले त्र्यहप्रतिषेधः अकाले तु न किञ्चिदित्य-नौचित्यापत्तेः ।

compilers of Digests in later times. This system is the outcome of a process of growth of which the beginnings are traceable in the earlier works on the sacred law. *Pār. Gṛ. S.* III. 10. 29-30, 38: The impurity caused by death lasts through three nights; through ten nights according to some (teachers). Their (that is of those who have touched the body) impurity lasts through one or two fortnights. In *Baudhāyana* 1.5 ten days' impurity is ordained for the parents (125); according to some, for the mother (126); according to others, for the father owing to the greater importance of the seed (127). To this general law exception was provided in the case of certain classes of people—a priest, one engaged in a sacrifice, a Brahmacārin and a King.[1] Such is the provision also in *Gautama* (Ch. XIV) who explains that it may interfere with the duty of a king or the Vedic study of a Brahmin, hence in their case the impurity terminates at once.[2] *Manu* V. 93-94: For Kings there is no taint of impurity nor for those who are under a vow, nor for those engaged in a sacrifice, since seated in the position of Indra they are always become, as it were, Brahman. In the exalted seat of a King purification on the instant is enjoined; his seat, meant for the protection of the subjects, is the reason therefor. Further, purity and impurity arise and cease[3] from the rulers of men. Thus in the matter of prescribing periods of impurity the King is declared to be supreme. *Viṣṇu* (XXII. 47 *et seq.*) also adds the cases of craftsmen and of servants of the King and

[1] सपिण्डेष्वादशाहाशौचमिति जननमरणयोरधिकृत्य वदन्त्यृत्विग्-दीक्षित-ब्रह्मचारि वर्जम् ।
—I. v. 107.

[2] सद्यःशौचं राज्ञश्च कार्य्यविरोधात् ब्राह्मणस्य च स्वाध्यायनिवृत्त्यर्थम् ।

[3] न राज्ञामघदोषोऽस्ति व्रतिनां न च सत्रिणाम् । ऐन्द्रं स्थानमुपासीना ब्रह्मभूता हि ते सदा ॥
राज्ञो माहात्मिके स्थाने सद्यःशौचं विधीयते । प्रजानां परिरक्षार्थं आसनञ्चात्र कारणम् ॥

* * * * * *

शौचाशौचं हि मर्त्यानां लोकेशप्रभवाप्ययं । (97)

occasions of installation of deities (already commenced), marriage, revolution, extreme distress.[1] The same rule is repeated by *Atri* who further declares that there is no impurity in one's case at the option of a Brahmin.[2] Here the power of dispensing with the impurity is vested in the Brahmin.[3] There is a resumè of the different rules in *Yāj.* III. 27-29. *Atri* further says that in the case of the vicious, those always dependent on others, those who are without sacred duties, the impurity is perpetual.[4] *Uśanas* (VI. 61) says that in the case of the perpetual student celibate or those who have retired to the forest, those who are Sannyāsins or Brahmacārins there is no impurity.[5] *Śaṅkha* says (XV. 1 and 21): Amongst sapiṇḍas of a Brahmin who is given to tending the sacred fires or to the pursuit of Vedic study, purification ensues after the third day. A Sannyāsin, one under a vow of Brahmacārin, a confectioner, one initiated in a sacrifice and the servants of the King suffer no impurity.[6] An anonymous Smṛti text cited in *Mitākṣarā* (on *Yāj.* III. 27-29) says that a Brahmin given to daily sacrifice in the fire and Vedic study becomes pure after one day ; he who has one of these qualifications, after three days and he who

[1] न राज्ञां राजकर्म्मणि न व्रतिनां व्रते। न सत्रिणां सत्रे। न कारूणां कारुकर्म्मणि। न राजाज्ञाकारिणां तदिच्छया। न देवप्रतिष्ठोत्सर्गविवाहेषु न देशविभ्रमे नापद्यपि च कष्टायामाशौचम्।

[2] व्रतिनः शस्त्रपूतस्य आहिताग्नेस्तथैव च। राज्ञस्तु सूतकं नास्ति यस्य चेच्छति ब्राह्मणः॥

[3] महीपतीनां नाशौचं हतानां विद्युता तथा। गोब्राह्मणार्थे संग्रामे यस्य चेच्छति भूमिपः॥

—Yāj., III. 27.

[4] व्यसनासक्तचित्तस्य पराधीनस्य नित्यशः। स्वाध्यायव्रतहीनस्य सततं सूतकं भवेत्॥

—Atri, 103.

[5] नैष्ठिकानां वनस्थानां यतीनां ब्रह्मचारिणाम्। नाशौचं विद्यते सद्भिः पतिते च तथा मृते॥

—Uśanas, VI. 61.

[6] जनने मरणे चैव सपिण्डानां द्विजोत्तमाः। त्र्यहाच्छुद्धिमवाप्नोति योऽग्निवेदसमन्वितः॥
यती व्रती ब्रह्मचारी सूपकारश्च दीक्षितः। नाशौचभाजः कथिताः राजाज्ञाकारिणश्च ये॥

is devoid of both, in ten days.[1] *Parāśara* adds a few more exceptions to the general rule [2] as to the term of impurity. By the later *Smṛtikāras* these long lists of persons exempted from impurity are repeated—for example, in *Pracetas* and *Śātātapa* cited in *Mit.* on *Yāj.* III. 27 where anonymous *Smṛti* texts[3] of the same import are also cited.

Devala quoted in *Mādhavīya* sets forth a gradation of periods of impurity according as a Brahmin is engaged in Vedic study or under a duty to preserve the sacred fires. It appears that till the time of *Devala* these rules continued to be repeated and in some cases amplified.[4] *Vijñāneśvara* (on *Yāj.* III. 27-29) appears to be unaware of the ban on the ancient usage. He reviews and reconciles the divergent passages and specifies the classes of persons who are entitled to the reduced impurity, and also discusses whether the exemption attaches to the person or is connected with the occasion. The Kalivarjya text of Śrīdhara prohibits reduction of impurity on the ground of mode of life and Vedic study.[5] Vijñāneśvara says that house-holders who did not save for the morrow or provided for three days only (*Manu.* IV. 7) had their term of impurity correspondingly reduced. The Brahmacārin, the Vānaprastha and the Sannyāsin were always free from impurity. According to him the reduction of the period of impurity relates to certain exceptional occasions and not to all social dealings of the person so

1 एकाहाद् ब्राह्मणः शुध्येद् योऽग्निवेदसमन्वितः। त्र्यहात् केवल एकस्तु विहीनो दशभिर्दिनैः॥

2 शिल्पिनः कारुका वैद्या दासीदासाश्च नापिताः। श्रोत्रियाश्चैव राजानः सद्यःशौचाः प्रकीर्त्तिताः॥

—III. 27.

3 सद्यःस्पृश्यो गर्भदासो भक्तदासस्त्र्यहाच्छुचिः।

Also—चिकित्सको यत् कुरुते तदन्येन न शक्यते। तस्माच्चिकित्सकः स्पर्शे शुद्धो भवति नित्यशः॥

4 चत्वार्य्यधीतवेदानां षडहान्याशौचमिष्यते। वेदाग्र्युक्तविप्रस्य त्र्यहमाशौचमिष्यते॥

एताभ्यां श्रुतयुक्तस्य दिनमेकं विधीयते। एतैः सार्द्धं कर्म्मयुक्तः सद्यःशुचिरसंशयः॥

5 K. V. Text, VI, Item xix.

exempted.[1] The exceptional privilege of immunity from impurity was found to be inapplicable to a society in which Vedic practices were in disuse and persons who might claim such immunity were getting rare.

Purification after Bone-picking of the Cremated

This ancient usage may be gathered from *Āś. Gṛ. S.* IV. 5. 1-10 : "The gathering (of the bones is performed) after the tenth (*tithi* from the death) on a *tithi* with an odd number of the dark fortnight under a single *Nakṣatra* (like Āṣāḍhās). A man into a male urn without special marks, a woman into a female one without special marks. Aged persons of an odd number, not men and women together (gather the bones). The performer of the ceremony walks three times round the spot with his left side turned towards it and sprinkles on it, with a *śamī* branch, milk mixed with water, with the verse 'O, cool one, O, thou that art full of coolness' (R. V. X. 16. 14). With the thumb and the fourth finger they should pick each single bone (and put into the urn) without making noise. The feet first, the head last. Having well gathered them and purified them with a winnowing basket, they should put (the urn) into a pit, at a place where the waters from the different sides do not flow together, except rain-water, with (the verse): 'Go to thy mother earth, there' (R. V. X. 18. 10). With the following (verse) he should throw earth (into the pit). After he has done so (he should repeat) the following (verse). Having covered (the urn) with a lid with (the verse) 'I fasten to thee' (R. V. X. 18. 13) they

[1] अयञ्च अशौचसङ्कोचो येनैव प्रतिपद्यादिना विना आर्त्तिकाह्निषयो न सर्व्वत्रैत्यवगन्तव्यम् * * यावत्यवाधितेऽनुपपत्तिप्रशमो न भवति तावद् वाक्यनीयम् * * अपिविदपदयोः कार्य्यान्वयित्वं भवति * * अतः काचित्कमेवेदमशौचसङ्कोचविधानं न पुनः सर्व्वव्यवहारादि-गोचरम् ।

then should go away without looking back, should bathe in water, and perform a *śrāddha* for the deceased." But it seems that the practice underwent some changes in regard to the time. *Viṣṇu* prescribes its observance on the fourth day of death (XIX. 10 *et seq.*).[1] He prescribes the throwing of the bones into the Ganges. To the same effect a text of *Kūrmapurāṇa* is quoted by Raghunandana in his Śuddhi-tattva[2] In *Yājñavalkya* (III. 17) the rite is not specially mentioned but the omission is supplied by Vijñāneśvara.[3] He also cites *Devala* to the effect that after the lapse of one-third of the period of impurity, touching the body of men of all the four castes is permitted.[4] It is to be noted that though in the same passage he repudiates (as resented by public opinion) the observance of graduated periods of impurity by the relations of the dead in the fifth, sixth, seventh degree as enjoined by another Smṛti, in regard to the usage itself, the Mitākṣarā knows no bar. *Aṅgiras* (cited in Vīr. Mit.) permits feeding in the houses of the *sapiṇḍas* (relations of the deceased) after the bone-picking.[5] *Dakṣa* VI. 16 (corr. to *Saṃvarta* in Raghunandana) repeats the ancient rule as to bone-picking on the fourth day.[6] The later Smṛti-kāras also set forth the graduated periods. *Laghu-Hārīta* (lxxxv-lxxxvi) another Smṛti-kāra of a

[1] चतुर्थे दिवसेऽस्थिसञ्चयनं कुर्युः। तेषाञ्च गङ्गाम्भसि निक्षेपः यावत्सङ्ख्यमस्थि पुरुषस्य गङ्गाम्भसि तिष्ठति तावद्वर्षसहस्राणि स्वर्गलोकमधितिष्ठति।

[2] P. 308, Vol. II (Jīb. Edn.).

[3] Under Śl. 16—त्रिरात्राशौचिनां पुनः पारस्करेण विशेषो दर्शितः। द्वितीये चतुरो दद्यादस्थिसञ्चयनं तथा। त्रींस्तु दद्यात्तृतीयेऽह्नि वस्त्रादि क्षालयेत् तथा।

[4] Devala—स्वाशौचकालाद्विज्ञेयं स्पर्शनन्तु विभागतः। शूद्रविट्क्षत्रविप्राणां यथाशास्त्रं प्रचोदितम्। इत्येतच्च अनुपनीतप्रयाणनिमित्ते अतिक्रान्ताशौचे च त्रिरात्रादौ वेदितव्यम्। उपनीतविषयेऽपि तेनैवोक्तम्—दशाहादि-विभागेन कृते सञ्चयने क्रमात्।

अङ्गस्पर्शनमिच्छन्ति वर्णानां तत्त्वदर्शिनः॥ त्रिचतुःपञ्चदशभिः स्पृश्या वर्णाः क्रमेण तु।

[5] ब्रह्मक्षत्रविशां भुक्तौ न दोषस्त्वग्निहोत्रिणाम्। सूतके शाव आशौचे त्वस्थिसञ्चयनात् परम्॥

[6] चतुर्थेऽह्नि कर्त्तव्यमस्थिसञ्चयनं द्विजैः। ततः सञ्चयनादूर्ध्वमङ्गस्पर्शो विधीयते॥

late date also formulates the old rule.[1] The law of ceremonial impurity upon the death of a *Sapiṇḍa* has become stricter and the cessation of impurity after one-third of the period has become obsolete, although the rite of bone-picking and throwing the bones into the Ganges is still observed. Raghunandana,[2] Kamalākara and Kāśīnātha (the author of Dharma-sindhu) while prescribing the latter and citing and discussing the pertinent texts practically ignore the importance of the rule as to cessation of impurity.

Prescribing Death-penance for Brahmins

Sins are graded into seven classes in *Viṣṇu*, Ch. xxxiii Sūtras 3 and 4, the most heinous being certain forms of incest called Atipātakas (Ch. xxxiv, s. 1). For those guilty of these sins the penance is prescribed as plunging into fire for they have no other means of atonement (s. 2).[3] *Hārīta* also lays down the same rule.[4] The next grade of sins called Mahāpātakas (*Manu*. XI. 55) when committed with knowledge and intention entails the same penance, *viz.*, death. Also violation of a superior's bed (*Manu*. XI. 104, *Saṃvarta*, *Aṅgiras* cited in Pr. Viv. and Ṣaṭtriṃśanmatam cited in Pr. Viv.)[5]; likewise the slaying of a Brahmin

[1] सर्व्वेषामेव वर्णानां विभागात् स्पर्शन भवेत् । यथोक्तेनाव शुचिः स्यात् सूतकी मृतकी तथा ॥
त्रिचतुःपञ्चदशभिः स्पृश्या वर्णाः क्रमेण तु ।

[2] In ref. to text in Note 3 p. 85 above Raghunandana says—यस्मादि चालयेत् इति प्रागुक्तचौरादि-समस्ताशौचान्तकृत्यपरम् ।

—Śuddhi-tattva, p. 333.

[3] अतिपातकिनस्त्वेते प्रविशेयुर्हुताशनम् ।
न ह्यन्या निष्कृतिस्तेषां विद्यते हि कथञ्चन ॥

[4] Cited in Prā. Viv.—यद्योऽग्निप्रवेशादतिपातकिनः । Also Āp. Dh. S.—नास्यास्मिन् लोके प्रत्यापत्तिर्विद्यते । I. xxiv. 26.

[5] इयं विशुद्धिरुदिता प्रमाप्याकामतो द्विजम् । कामतो ब्राह्मणवधे जीवतो नास्ति निष्कृतिः ॥

—Kālikāpurāṇa (cited in Prāy. Viv., p.72).

is expiated by death (*Manu*. XI. 74, 80, *Ibid*., 73). Also *Kālikāpurāṇa*[1] and *Bhaviṣyapurāṇa*[2] cited in Prā. Viv. With regard to a Brahmin's drinking spirits (*M*. XI. 147; *Yaj*. III. 252, *Yama*,[3] *Bhaviṣya*[4]), or the theft of a Brahmin's gold, more than 80 *ratis* being technically called *Suvarṇa* (*M*. XI. 100-101 =*Bhaviṣya*, cited in Prā. Viv.; also Ṣaṭtriṃśanmatam cited in Prā. Viv.).[5] For association of an intimate kind also the same atonement is prescribed (*M*. XI. 182).[6] In all these cases the atonement is death or its equivalent—the 24 years' penance.

Śūlapāṇi says that where death is prescribed for an act with intent, there its alternative is to be twice the period of 12 years for penance which is the expiation for an act without intent.[7] And he further says that "in reality texts

[1], [2] Aṅgiras—

प्राणान्तिकन्तु यत् प्रोक्तं प्रायश्चित्तं मनीषिभिः।
तत्र कामकृतं प्राप्य विज्ञेयं नात्र संशयः॥

Bhaviṣya Purāṇa—

ब्राह्मणस्य ब्राह्मणयोर्ब्राह्मणानाञ्च पुत्रक। प्रायश्चित्तस्य चैकत्वं जातिमाश्रित्य लक्ष्यते॥
ब्राह्मणं ब्राह्मणो वीर ब्राह्मणान् सुबहूनपि। निहत्य युगपद् वीर एकं प्राणान्तिकं चरेत्॥

—Prā. Viv., p. 77. Bhaviṣya Purāṇa (cited in Prā. Viv. 73)—

गुणान्वितन्तु यो विप्रं गुणैर्हीनस्तु चाप्यथ। हिनस्ति बुद्धिपूर्व्वन्तु न भवेत्तस्य निष्कृतिः॥
विट्शूद्राणां विशेषेण घ्नतां कामतो द्विजान्। प्राणान्तिकी भवेद् यत्र कामतो निर्गुणे हते॥
सगुणे निहते कामान्निष्कृतिर्न विधीयते।

[3] असक्तज् ज्ञानतः पीत्वा वारुणीं पतति द्विजः। मरणं तस्य निर्द्दिष्टं प्रायश्चित्तं विधीयते॥

[4] मतिपूर्व्वं सुरापाने प्राणान्तिकमुदाहृतम्। गौडीमाध्वीस्तथाभ्यासे प्राणान्तिकमुदाहृतम्॥

—Bhaviṣya Purāṇa.

[5] सुवर्णादल्पहरणे वत्सरः परिकीर्त्तितः। ऊर्द्ध्वं प्राणान्तिकं ज्ञेयं यद्वा ब्रह्महनो व्रतम्॥

—Ṣaṭtriṃśanmatam, cited in Prā. Viv. (119).

[6] यो येन पतितेनैषां संसर्गं याति मानवः। स तस्यैव व्रतं कुर्य्यात् तत्संसर्गविशुद्धये॥

[7] यत्र तु कामकृते मरणमुद्दिष्टमस्ति तत्र अकामकृतस्य प्रायश्चित्तस्य द्वादशवार्षिकद्वैगुण्यं मरणेन सह विकल्पितं कर्त्तव्यम्। यथा ब्रह्महत्यामभिधाय आह व्यासः—एतदेव कुर्व्वीत गुरुतल्पगमकामतः। कामतो द्विगुणं प्रोक्तं पूर्व्वेषु च यदुच्यते। Prā. Viv., p. 27.

importing absence of expiation negative eligibility for social intercourse even after performance of the 24 years' penance—the alternative to death, and not existence of penance'' (p 73)[1]. In regard to the title of this prohibition opinions differ. Dāmodara says that it means the performance of penance of death by fall from a height or from plunging into fire prescribed in another text and he rejects the other view that, as in the case of secret penance, a learned assembly is not to prescribe the penance to the sinning Brahmin, but he is to gather it somehow and perform it.[2]

According to Anantadeva it signifies that in the Kali age there is no effect of averting hell in the penance of the performance of a vow since Yājñavalkya says: Where the sin is intentional, however, by virtue of express text the sinner after expiation becomes eligible for social intercourse (p. 472 bottom).

Penance of Self-sacrifice

The origin of this form of penance is traceable to Āpastamba who prescribes it for the killing of a Brahmin male or a Brahmin woman bathed after monthly illness or for destroying her child in the womb.[3] The murderer is to

[1] वस्तुतस्तु निष्कृत्यभाववचनं मरणविकल्पित-चतुर्विंशतिवार्षिकप्रायश्चित्ते कृतेऽपि व्यवहार्य्यताभावपरं न तु प्रायश्चित्ताभावपरम्।

[2] विधानं तत्प्रयुक्तमनुष्ठानमिति यावत्। यत्तु सभ्यैर्मरणान्तकं नोपदेष्टव्यं किंतु रहस्यप्रायश्चित्तवत् यथाकथञ्चित् अनुष्ठेयमिति तन्मन्दम्। मनुस्मृतेरेतद्युगविषयत्वे प्रमाणाभावात् युगान्तरे खलु यत् प्राप्तं तत् कलौ निषेद्धव्यं, युगान्तरे च मनुवाक्येनैवायमर्थः प्राप्तस्तस्य कलौ निषिद्धत्वापातात्। Yāj.—III. 226, *contra* Āp. Dh. S.—I. xxiv. 26, cited in note 4, p. 86. But *vide* द्वादशवर्षाणि चरित्वा सिद्धः सद्भिः सम्प्रयोगः। Āp. Dh. S.—I. xxiv. 20.

[3] I. xxiv. 18—गाश्च रक्षेत्। 19—तासां निष्क्रमणे प्रवेशने द्वितीयो ग्रामेऽर्थः। 21—आजिपथे वा कुटिं कृत्वा ब्राह्मणगव्योपजिगीषमाणो वसेत् त्रिः प्रतिराद्धोऽपजित्य वा मुक्तः। I. xxv, 12—प्रथमं वर्णं परिहाप्य प्रथमं वर्णं हत्वा संग्रामं गत्वावतिष्ठेत। तत्रैनं हन्युः। स मृतः शुध्यति)।

build a hut in the path of robbers for the defence of Brahmins and the sacred animal or he is to plunge into the thick of the fight to be killed by soldiers as a part of their duty. The metrical Smṛtis repeat the law, *e.g.*, *Manu* XI. 74 and 80.[1] Also *Yāj*. III. 243, 245, 247.[2] The latter introduces another occasion, *i.e.*, the rescue of a Brahmin's property stolen or robbed ; if successful or wounded or killed in such attempt the delinquent becomes sinless. For Brāhmaṇicide *Manu* prescribes 13 forms of penance.[3] Quotations from the Purāṇas in Prāy. Viv. show that other alternatives were prescribed such as, in the case of the rich, giving up of all properties to Brahmins.[4] The *Arthaśāstra* has not these sacerdotal punishments.[5] Their abrogation was necessitated by changed social conditions and the humanizing influence traceable in many of the prohibitions. The title is otherwise explained by some[6] as ceremonial gift to an absent person with libation of water poured on the earth; but this is rejected by Anantadeva.[7]

Expiation for Association with Sinners and for Sins other than Theft of Gold

This compound title has been construed in two different ways. It has been split up into two, (1) pollution by contact

1 लक्ष्यं शस्त्रभृतां वा स्याद्विदुषामिच्छयात्मनः। * * ब्राह्मणार्थे गवार्थे वा सद्यः प्राणान् परित्यजन्। मुच्यते ब्रह्महत्याया गोप्ता गोब्राह्मणस्य च।

2 ब्राह्मणस्य परित्राणाद् गवां द्वादशकस्य वा। तथाश्वमेधावभृथस्नानाद्वा शुद्धिमाप्नुयात्।
आनीय विप्रसर्व्वस्वं हृतं घातित एव वा। तन्निमित्तं क्षतः शस्त्रैर्जीवन्नपि विशुध्यति॥
संग्रामे वा हतो लक्ष्यीभूतः शुद्धिमवाप्नुयात्। मृतकल्पः प्रहारार्तो जीवन्नपि विशुध्यति॥

3 मनुना कीर्त्तितानीह त्रयोदश यथाक्रमम्।—भविष्यपुराणम्।

4 सर्व्वस्वं वा वेदविदे ब्राह्मणायोपपादयेत्। धनं वा जीवनायालं गृहं वा सपरिच्छदम्॥

5 A. Ś. II. 73—विपत्तौ कण्टकशोधनाय नीयेत।

6 Nir. Sin.—यद्वा परोद्देशात्मसंत्यागो गोदानं मनसा पात्रमुद्दिश्य इत्युक्तम्।

7 केचित्तु परोद्देशात्मसंत्यागो दानं मनसा पात्रमुद्दिश्य इत्युक्तम् तन्निषिध्यत इत्याहुः। तन्न। उद्देशेन प्रतिगृह्यतामित्यादि व्यवहारनिवृत्तिलक्षणाया निर्म्मूलत्वात्।

and (2) expiation for heinous offences other than theft of gold. The first is treated separately. The word *niṣkṛti* is understood as penance of death by Kamalākara.[1] In the Kalivarjya-vinirṇaya it is taken to mean secret penance which according to Dāmodara would be effective in the case of theft of gold only, and not the other great sins. His argument runs thus:—It (the term *niṣkṛti*) does not mean penance generally for that would involve conflict with the injunction contained in the original text, nor mortal penance since its prescription for others being forbidden, its performance of one's own accord is permitted; nor social intercourse for that would disagree with the injunction as to the feeding of Brahmins; nor purification in the other world since that is not capable of achievement directly by human action (compare Mitākṣara on Yāj. III. 226)[2] nor the prohibition of the means thereto as conflicting with the aforesaid injunction. Hence *niṣkṛti* or absolution is to be explained as secret penance.[3]

In support of this view Dāmodara cites texts from *Bṛhannāradīya* and *Viṣṇu-purāṇa* to the effect[4] that people in the Kali age carefully conceal their sin and perform penances in secret. Purification of the impure-minded does not result therefrom. And such secret penance, he adds,

[1] अन्यानि महापातकानि ब्रह्महत्यासुरापगुरुतल्पानि चौर्य्यं, तेषामकामकृतानां मरणान्तप्रायश्चित्तं विप्राणां कलौ नेत्यर्थः।—Nirṇ. Sin.

[2] Gautama XIX—न हि कर्म्म क्षीयत इति under the verse प्रायश्चित्तैरपैत्येनो यदज्ञानकृतं भवेत् कामतो व्यवहार्य्यस्तु वचनादिह जायते।

[3] स्तेयान्यस्मिन् सुवर्णस्तेयव्यतिरिक्ते महापातके निष्कृतीरहस्यप्रायश्चित्तम्, न प्रायश्चित्तमात्रम्, मूलोक्ततद्विधिविरोधात्। नापि प्राणान्तिकं तस्योपदेशनिषेधेन स्वयंकर्त्तव्यताभ्यनुज्ञानात्, नापि व्यवहारो ब्राह्मणभोजनादिविधिविरोधात्। नापि परलोकशुद्धिस्तस्याः साक्षात् पुरुषकृत्यसाध्यत्वेनावर्जनीयत्वात्। नाप्युपायतन्निषेधः पूर्व्वोक्तविधिविरोधात्। तस्माद्रहस्यप्रायश्चित्तमेव निष्कृतिरिति व्याख्येयम्।

[4] छादयन्ति प्रयत्नेन स्वदोषं पापकर्म्मिणः। रहस्यमेव कुर्व्वन्ति प्रायश्चित्तक्रियां कलौ।
मनःशुद्धिविहीनानां निष्कृतिर्न ततो भवेत्।

is condemned in texts which enjoin confession.[1] Nor is this exception in the case of the sin of theft of gold unreasonable since in the Kali age such theft being easy, the prescription of penance by the assembly of learned Brahmins is rarely obtained. Hence this provision has been made to sanction secret penance (in the case of theft of gold only).

Sins are of different grades—the most heinous being the killing of a Brahmin, the drinking of wine, the theft of gold and the violation of the bed of a *Guru* and association with those who have committed any of these sins. (*Baudh. Dh. S.* II. i. 6, 15, 17, 21; *Yāj.* III. 227; *Likhita* 72.)[2] Theft of gold was technically of an amount exceeding 80 *ratis*. The modes of expiation provided for these offences were not always of a spiritual character. Often they took the form of royal punishment; thus *Baudhāyana* (II. i. 16), says that the thief should approach the King with a club on his shoulder and ask him to punish him with that in accordance with the duty of a Kṣatriya. On punishment or release the thief is freed from sin (*Gautama*, Ch. XII[3] and *Manu*, XI. 100; *Uśanas*, VIII. 15, 16; and *Parāśara*, XII. 70).

The killing of a Brahmin was inexpiable. *Baudhāyana* cites an older text according to which intentional slaying of a Brahmin is inexpiable and expiation is provided by the sages where it is unintentional.[4] For drinking spirituous

[1] न चेवं सुवर्णस्तेयपर्युदासोऽसङ्गतः तस्य कलावनायासेन सुवर्णस्तेयनिष्पत्त्या प्रतिनिमित्तं पर्षदुपदेशासंभवेन रहस्यप्रायश्चित्ताभ्यनुज्ञानार्थत्वादिति केचित् ।

[2] ब्रह्महत्या सुरापानं स्तेयं गुर्वङ्गनागमः ।
महान्ति पातकान्याहुः संसर्गश्चापि तैः सह ॥—Manu. XI. 55.

[3] Gautama—स्तेनः प्रकीर्णकेशो मुषली राजानमियात् कर्माचक्षाणः पूतो वधमोक्षाभ्याम्, अघ्नन्नेनस्वी राजा ।

[4] अमत्या ब्राह्मणं हत्वा दुष्टो भवति धर्मतः । ऋषयो निष्कृतिं तस्य वदन्त्यमतिपूर्वके ॥
मतिपूर्वं घ्नतस्तस्य निष्कृतिर्नोपलभ्यते ।—III. i. 6-7.

liquor also the drinking of liquor scorching hot is prescribed and also re-initiation in the case of the twice-born.[1] For violation of a *Guru's* bed equally severe penance is provided.[2] For associating with these offenders, *Manu* declares that one becomes like the original sinners[3] and should perform the penance prescribed for them. The association had to be of a certain specified kind and duration. (*Vide* next section.)

The import of the prohibition is that secret penance for these heinous offences is not effective in the present age but open confession coupled with the performance of the penance prescribed is needed.

Pollution by Contact with Sinners

As already indicated under the allied topic, those who associated with sinners of the most heinous kind were also regarded as offenders of the first degree. *Āpas. Dh. S.* I. 21. 5 *et seq.* : Intercourse with the fallen is not ordained. (6) Nor with *Apapātras* (outcasts).

(7) Now the actions which cause loss of caste follow. (8) These are theft (of gold), offences rendering one *Abhiśasta*, homicide, neglect of the Vedas, causing abortion, incestuous connection with descendants of the parents or the offspring of such persons, drinking spirits; and intercourse with persons with whom it is forbidden.

The interdiction of association with sinners was very strict in ancient times. Thus, according to *Vaśiṣṭha* : Wives, sons and disciples involved in sinful acts and those

[1] सुरां पीत्वा उष्णया कायं दहेत् Also अमत्या वारुणीं पीत्वा......ब्राह्मणः क्षत्रियो वैश्यः पुनः संस्कारमर्हति। Praśna II. Ch. i. 21, 25.

[2] गुरुतल्पगस्तप्ते लोहशयने शयीत —*Ibid.* 14. सूर्मिं वा ज्वलन्तीं श्लिष्येत्।—15.

[3] यो येन पतितेनैषां संसर्गं याति मानवः।
स तस्यैव व्रतं कुर्य्यात् तत्संसर्गविशुद्धये ॥—XI. 182.

[4] Baudh. Dh. Sūtra—II. i. 88.
संवत्सरेण पतति पतितेन समाचरन्। याजनाध्यापनाद् यौनान्न तु यानासनाशनात् ॥

who are otherwise fallen are to be abandoned upon declaration.[1] *Viṣṇu* (LXXXII, 23) ordains that those who associate with the fallen are not to be invited to *śrāddhas*. *Baudhāyana* (II. 1. 62) says that the association for one year in the form of the performance of priestly duties, teaching or sexual connexion causes one's fall but not journeying or sitting or dining together. So also *Uśanas* (VIII. 30 *et seq.*) who prescribes penances for different cases.[2] *Vyāsa* has a text to the effect that the sinner alone becomes tainted in Kali.[3] *Parāśara* recapitulates the older law on the subject and its modification in later ages. According to him in Kṛtayuga speaking with sinners contaminated, in the Tretā the sight of them, in the Dvāpara the taking of food and in Kali a man falls through his own sinful acts.[4] In the first age the country had to be given up, in the second the village, in the third the family of the sinner, and in the present age the sinner alone should be avoided.[5] Association with sinners may be, according to the Smṛtis, of nine kinds, of which the minor ones are declared by

[1] भार्य्या पुत्रश्च शिष्याश्च संस्पृष्टाः पापकर्म्मभिः ।
पारभाष्य परित्याज्याः पतितो योऽन्यथा भवेत् ॥—Ch. XIII.

[2] Devala (cited in Prāya. Viv.) enumerates the nine kinds of association—

संलापस्पर्शनिःश्वाससहशय्यासनाशनात् । याजनाध्यापनाद्यौनात् पापं संक्रमते नृणाम् ॥

Also Bṛhaspati (*op. cit.*)—

एकशय्यासनं पङ्क्तिर्भाण्डपक्वान्नमिश्रणम् । याजनाध्यापनं योनिस्तथा च सहभोजनम् ॥
नवधा संकरः प्रोक्तो न कर्त्तव्योऽधमैः सह ।

[3] कलौ कर्त्तैव लिप्यते—इति व्यासोक्तेः । Kṛṣṇam Bhaṭṭa's commentary on Nirṇ. Sindhu.

[4] I. 25—कृते सम्भाषणात् पापं त्रेतायां चैव दर्शनात् ।
द्वापरे चान्नमादाय कलौ पतति कर्म्मणा ॥

[5] I. 24—त्यजेद्देशं कृतयुगे त्रेतायां ग्राममुत्सृजेत् ।
द्वापरे कुलमेकन्तु कर्त्तारञ्च कलौ युगे ॥

the Kalivarjya texts to be permissible in the present age.[1]

Social Intercourse with the Corrupted.

The Kalivarjya texts given by Śrīdhara and Devaṇṇa contain three provisions in regard to the sexually corrupted :—

(1) Association with men corrupted with women of other *varṇas*, even after expiation.[2]

(2) Acceptance into society of women ravished or otherwise fallen so far as permitted by the sacred law.[3]

(3) Abandonment of the wife of a superior or a wife who has conceived through connection with a low-class man.[4]

A survey of the rules in the different treatises shows that the ancient law had been somewhat lax in this matter; this was followed by stricter rules which again tended to decline to the earliest stage and the Kalivarjya texts were an attempt at the restoration of the stricter principle.

The irregularities of a primitive state of society are illustrated by *Śat. Br.* II. v. 2. 20 in which a woman joining her husband in a sacrifice is asked to confess her lapses and thereby to purify herself for the function. Such purification, if the lapse was of the minor kind, is also proved by *Manu* IX. 20-21.[5] The expiation here referred to is,

1 आसनाच्छयनाद् यानात् सम्भाषात् सहभोजनात्।
संक्रामन्ति हि पापानि तैलबिन्दुरिवाम्भसि ॥—Parāśara, XII. 71,

Devala cited in Prāy. Viv.—

पतितेन सहोषित्वा जानन् संवत्सरं नरः। मिश्रितस्तेन सोऽब्दान्ते स्वयञ्च पतितो भवेत् ॥
याजनं योनिसंबन्धं स्वाध्याय-सहभोजनम्। कृत्वा सद्यः पतन्त्येते पतितेन न संशयः ॥

2 सवर्णान्याङ्गनादुष्टैः संसर्गः शोधितैरपि। (26)

3 बलात्कारादिदुष्टस्त्रीसंग्रहो विधिचोदितः। (43)

4 अयोनौ संग्रहे वृत्ते परित्यागो गुरुस्त्रियाः। (33)

5 यन्मे माता प्रलुलुभे विचरन्त्यपतिव्रता। तन्मे रेतः पिता वृङ्क्तामित्यस्यैतन्निदर्शनम् ॥
ध्यायत्यनिष्टं यत् किञ्चित् पाणिग्राहस्य चेतसा। तस्यैव व्यभिचारस्य निह्नवः सम्यगुच्यते

according to Medhātithi and Kullūka, for mental lapse, although elsewhere the sage declares the monthly illness to be enough to purge such sin (V. 108).[1]

The well-known story of Jabālā (*Chānd. Upan.* IV. iv) also points to a primitive condition of society.[2] From this state of things, sexual morality was sought to be lifted to the utmost strictness by the provisions of both sacred and secular law.

Gautama (XXII) says that on connection with a man of a low-class a woman becomes fallen.

XXIII. An adulterous wife is to be kept in confinement and given bare sustenance

XXIV. For cohabiting with a Śūdra woman a man requires penance. For adulterous connection between a high-class female and a low-caste male the punishment for either is to be publicly thrown to the dogs at the King's command. *Baudhāyana* mentions procreation on a Śūdra woman among the degrading sins (II. i. 55). Sūtras 67 *et seq.* provide that the fallen are to live in a class by themselves. But their issue may separate from them and unite with the Āryas but this is disputed by Hārīta. The discussion on the point is given in 68-72.[3] Some consideration, however, is shown to women in this matter. *Baudhāyanā* (II. 2) cites ślokas to show that women cannot lose their purity. He also prescribes penances for inter-

[1] रजसा स्त्री मनोदुष्टा।

[2] सा हैनमुवाच नाहमेतद्वेद तात यद्गोत्रस्त्वमसि, बह्वहं चरन्ती परिचारिणी यौवने त्वामलभे साहमेतन्न वेद यद्गोत्रस्त्वमसि, जबाला तु नामाहमस्मि सत्यकामो नाम त्वमसि।

[3] अथापि न सेन्द्रियः पतति। तदेतेन वेदितव्यमङ्गहीनो हि साङ्गं जनयेत्। मिथ्यैतदिति हारीतः। दधिधानीसधर्माः स्त्रियः स्युर्यो हि दधिधान्यामप्रयतं पय आतच्य मन्थति न तच्छिष्टा धर्मकार्येषूपयोजयन्ति। एवमशुचि शुक्लं यन्निर्वर्तते न तेन सह सम्प्रयोगो वर्त्तते।

—Āp. Dh. S., I. xxix. 10—14.

course with women of the lowest class.[1] *Āpastamba Dh. S.* (I. 28. 9) says that a mother, even though fallen, is not to be abandoned.[2] In II. 27 he lays down the rule that an Ārya on connection with Śūdra women is to be banished. In the reverse case the Śūdra is to be killed and the female consort to be emaciated.[3]

In the first Sūtra of the same Kaṇḍikā he says that penance being performed, the adulteress is to be treated as before, for relation between husband and wife is established by the sacred law.[4]

Vaśiṣṭha provides milder punishment than Gautama for a female of a higher caste in adultery with a male of a lower caste; the former after public disgrace becomes pure but the male is to be burned to death in various ways. For the mental lapse of the wife, he enjoins three nights' penance (Chap. XXI).

The secular law as embodied in *Kauṭilīya* is milder than the sacred law on the punishment of adultery. The capital punishment enjoined by Gautama and by Āpastamba had been reduced to torture, and the Arthaśāstra abolished the latter also[5] except for a Śūdra or a Cāṇḍāla corrupting a woman of a higher caste.

1 61—अब्राह्मणस्य शारीरो दण्डः संग्रहणे भवेत्। 62—न तु चारणदारेषु न रङ्गावतरे वध्यः। 63—स्त्रियः पवित्रमतुलं नैता दुष्यन्ति कर्हिचित्। मासि मासि रजस्तासां दुरितान्यपकर्षति। 72—एतेन चाण्डालीव्यवायो व्याख्यातः। अथाप्युदाहरन्ति—
चण्डालीं ब्राह्मणो गत्वा भुक्त्वा च प्रतिगृह्य च। अज्ञानात् पतितो विप्रो ज्ञानात् तु समतां व्रजेत्॥

2 माता पुत्रत्वस्य भूयांसि कर्म्माणि आरभते तस्यां शुश्रूषा नित्या पतितायामपि।

3 नाश्य (निर्वास्यः) आर्य्यः शूद्रायाम्। वध्यः शूद्र आर्य्यायां दारश्चास्य कर्शयेत्।—Ujvalā cites a *śloka* as Manu's which perhaps occurred after IX. 178:

ब्राह्मणक्षत्रियविशां स्त्रियः शूद्रेण सङ्गताः। अप्रजाता विशुद्ध्यन्ति प्रायश्चित्तेन नेतराः॥

4 चरिते यथापुरं धर्म्मो हि संबन्धः।

5 ब्राह्मण्यामगुप्तायां क्षत्रियस्योत्तमः, सर्व्वस्वं वैश्यस्य। शूद्रः कटाग्निना दह्येत।—Ch. 90, *cf.* Manu, VIII. 374-76. परचक्राटवीहृतामोघप्रव्यूढामरण्येषु दुर्भिक्षेषु वा त्यक्तां प्रेत-

In *Manu* there is a resumé of the rules regarding the treatment in society of these offenders—male and female, but he himself inclines to the stricter view. Thus in Ch. VIII he ordains death for a non-Brahmin guilty of this offence (359). But if the parties are of the same caste, the man who corrupts the female is not punishable with death (364). If the female seeks a man of low caste, she is to be restrained at home (365). He makes distinctions according to the social status of the parties. Within the caste the highest punishment is enjoined for forcible abductions; for a man of a lower caste, the punishment is of the middle grade; if it be against a higher caste, for the male it is death, and for the female, the cutting off of the nose, etc. (II. 86).[1] In this connection, Haradatta commenting on Āpas. Dh. S., II. 27. 10 quotes a śloka which in some recensions occurs after XI. 179 (cited above).

In *Yājñavalkya* the rigour of Manu is somewhat softened. In II. 286 he reproduces the provisions of Āpas. Dh. S. II. 27. In I. 72 he declares that in adultery the woman is purified by the monthly illness; abandonment is prescribed in case of conception. III. 231 ranks connection with a woman of the lowest class with violation of the bed of a Guru and śloka 241 classes connection with a woman of a lower caste as a minor sin (*upapātaka*). III. 296 lays down

भार्योत्सृष्टां वा परस्त्रियं निस्तारयित्वा यथासम्भाषितं समुपभुञ्जीत। जातिविशिष्टां अकामामनपत्यवतीं निष्क्रयेण दद्यात्।

चौरहस्तान्नदीवेगाद् दुर्भिक्षाद्देशविभ्रमात्।
निस्तारयित्वा कान्तारान्नष्टां त्यक्तां मृतेति वा॥
भुञ्जीत स्त्रियमन्येषां यथासम्भाषितां नरः।
न तु राजप्रतापेन प्रमुक्तां स्वजनेन वा॥
न चोत्तमां न चाकामां पूर्व्वापत्यवतीं न च।
ईदृशीं त्वनुरूपेण निष्क्रयेणापवाहयेत्। (Ch. 89).

1 सजातावुत्तमो दण्ड आनुलोम्ये तु मध्यमः।
प्रातिलोम्ये वधः पुंसां स्त्रीणां नासादिकर्त्तनम्। II. 289.

the rule for fallen women: They are to be lodged near home and given food and clothes and restrained. Intercourse with a vile person is a specially degrading offence in women.[1]

In *Atri* the relaxation of the old rigour is even more marked. He enumerates the seven classes of Antyajas and says that for connection with their women, if knowingly had, the penance is *kṛcchrābda*, and if unknowingly, *cāndrāyaṇa*. His doctrines on the incorruptibility of women are somewhat startling.[2]

Saṃvarta cited by Kṛṣṇam Bhaṭṭa has the text which prescribes punishment for a woman forcibly corrupted. He provides penances for different classes of sexual offenders (ślokas 149-54 and 164-68). In śloka 171 he says that his rules agree with those of Yama.[3]

Kātyāyana awards death to forcible intercourse (N. Banerjee's Matasaṅgraha, śl. 667) and says further that for all offences of this sort where fines are imposed on men, half the amount is the punishment for women; for her mutilation is enjoined where death is awarded to the male.[4] He says further that sexual relations with a woman rescued from the hands of robbers or from drowning, flood or

1 पतितानामेष एव विधिः स्त्रीणां प्रकीर्त्तितः (सम्परिकीर्त्तितः ?)।
वासो गृहान्तिके देयमन्नं वासः सरक्षणम् ॥

2 न स्त्री दुष्यति जारेण (18-19)

पूर्वं स्त्रियः सुरैर्भुक्ताः सोमगन्धर्ववह्निभिः। भुञ्जते मानवाः पश्चान्न ता दुष्यन्ति कर्हिचित् ॥ (190)

असवर्णैस्तु यो गर्भः स्त्रीणां योनौ निषिच्यते। अशुद्धा सा भवेन्नारी यावद् गर्भं न मुञ्चति ॥ (191)

विमुक्ते तु ततः शल्ये रजश्चापि प्रदृश्यते। तदा सा शुध्यते नारी विमलं काञ्चनं यथा ॥ (192)

स्वयं विप्रतिपन्ना वा यदि वा विप्रतारिता। बलान्नारी प्रभुक्ता वा चौरभुक्ता तथापि वा ॥ (193)

न त्याज्या दूषिता नारी न कामोऽस्या विधीयते। ऋतुकाल उपासीत पुष्पकालेन शुध्यति ॥ (194)

सकृद् भुक्ता तु या नारी म्लेच्छैर्वा पापकर्मभिः। प्राजापत्येन शुध्येत ऋतुप्रस्रवणेन तु ॥ (197)

बलाद् हृता स्वयं वापि परप्रतारिता यदि। सकृद् भुक्ता तु या नारी प्राजापत्येन शुध्यति ॥ (198)

3 बलात् प्रमथ्य भुक्ता चेद् दह्यमानेन चेतसा। प्राजापत्येन शुद्धिः स्यात् तस्याः पावनं स्मृतम् ॥

4 सर्वेषु चापराधेषु पुंसो योऽर्धदमस्तथा। तदर्धं योषितो दद्युर्वधे पुंसोऽङ्गकर्तनम् ॥

famine are justified (Banerjee, 686-87). But this is not so, where the woman is of a higher caste or is an unwilling party (688-89).[1]

Parāśara also declares purification by monthly illness except in conception (VII. iv); in that case, she is to be banished (X. 30). A fallen Brahmin woman cannot return to society. A woman who leaves her home and family is lost, both in this world and hereafter (X. 31, 32). From the tenth day of her disappearance her offence is inexpiable and she should be treated as an outcast (X. 33).

Devala, whose extant Smṛti bears evident traces of a late date, amplifies and extends the laxer provisions of Atri to cases of abduction and corruption of males by *Mlecchas* (śls. 8 ff.) and also of females (śls. 36 ff.) and to cases of conception through rape by *Mlecchas* (śls. 47 ff). Śl. 50 says that after delivery, a woman with child through intercourse with a man of a lower caste is purified by penance.[2]

Aparārka on *Yāj*. I. 70 says that after the performance of the penance the woman is again fit for social intercourse. This repeats Manu's text, XI. 190[3] as well as Āpas. Dh. S., II. 27. 1.

Vijñāneśvara on śl. 72 says that for a woman corrupted with a man of a low class abandonment is prescribed, *i.e.* exclusion from enjoyment and religious functions but she is not to be driven away from home since the rule is to restrain her in a separate dwelling. The Kalivarjya texts were evidently intended to counteract this tendency of allowing social intercourse after the performance of penance and to revive the strictness of the code of Manu.

[1] Śls. 686-89 almost agree with Kauṭilya, Ch. 89 (Ślokas quoted above).

[2] Ślokas 49-50 agree almost with Atri—ślokas 191-92.

[3] Aparārka—कृतप्रायश्चित्ता तु संव्यवहार्य्या भवति। Manu XI. 190—कृत-निर्णेजनांश्चैव न जुगुप्सेत कर्हिचित्।

Sea-voyage

Although directly opposite views have been taken as to the construction of diverse revealed texts, it would be hazardous to assert that sea-voyage was unknown to the Aryans in Vedic times. The story of Bhujyu, son of Tugra, who is repeatedly mentioned in the Veda as being saved from the deep by the Aśvins[1] and the references to the treasures of the ocean and gains of sea-trade point to marine navigation.[2] The word *samudra* occurs frequently in the Ṛgveda and later texts and though the meaning of the word in the earlier passages is disputed, in regard to the later passages there is little difference of opinion[3]. Recent investigations into India's relations with the Far East have brought to light overwhelming data in support of the continuance of the maritime activities of the Hindus till about the fifteenth century A.D. Evidence of commercial relations with the West at the beginning of the Christian era is found in the *Periplus of the Erythrean Sea*. Ideas of ceremonial purity perhaps led to the dislike of sea-voyages and the consequent contact with strange races and other creeds from a very early date. But concession was made to territorial practice. Thus *Baudhāyana* speaking of the disparities in Aryan practice in different parts of India refers Sea-voyage to the North and holds it as a practice that would pollute men of the South.[4] It follows that Sea-voyages were commonly performed by Northern people and were not regarded as reprehensible for them. The

[1] As in Ṛgveda—I. 112. 6 ; X. 40. 7, etc.

[2] As in Ṛgveda—I. 47. 6.

[3] As also about Ṛgveda—VII. 95. 2.

[4] I. i. 19—पञ्चधा विप्रतिपत्तिर्दक्षिणतस्तथोत्तरतः। 22—अथोत्तरतः······समुद्रयानमिति। 23—इतरदितरस्मिन् कुर्व्वन् दुष्यति इतरदितरस्मिन्। 24—तत्र तत्र देशप्रामाण्यमेव स्यात्।

early history of Indian colonies in the Far East and the traditions current in them as to their original home show that the colonists generally started from Northern India.[1] There were four centres from which the colonisers started—Tāmralipta on the coast of Bengal, Gopālpur and ancient Kaliṅga and three unidentified harbours near Muslipattam and Broach. M. Pelliot has shown that from as early as the second century B.C. there was also a regular trade-route by land between Eastern India and China through Upper Burma and Yunnan, which, obstructed for a time by barbarous tribes, was re-opened again in the eighth century A.D. The Indian colonies in the Far East were established before the second century A.D. M. Parmentier and other historians have tried to show that events in the mother country—the progress of cults and changes in usage and political conditions at home—were felt in the Eastern colonies. "For nearly three centuries after India was conquered by the Mahomedans" (the disaster at Tarain, 1194, preceded by the submission of Rājyapāla of Kanauj to Mahmud of Ghazni, 1019), "the banner of Hindu independence was hoisted up in those far-off lands." But like a fountain with a dried up spring these colonies decayed with the downfall of their motherland. "Champa fell before Annamite invasions in 1543. In Java the last Hindu Dynasty was overthrown in 1479" (Fergusson).

The prejudice against sea-voyage despite the traces of it available in Vedic literature had an early origin. Thus *Baudhāyana* prescribes penances for sea-voyage.[2] At the same time, in I.10.13 he ordains that the customs duty on Sea-trade belongs to the King. The term *samudra-śulka* is

[1] Dr. R. C. Mazumdar's Champa.

[2] II. i. 50-51, 55-56—अथ पतनीयानि .....समुद्रसंयानम्......शूद्राभिजननम् तदपत्यत्वञ्च। 57—एषामन्यतमं कृत्वा। 58—चतुर्थकालामितभोजिनः स्युरपोऽभ्युपेयुः सवनानुकल्पम्। स्थानासनाभ्याम् विहरन्त एते त्रिभिर्वर्षैस्तदपघ्नन्ति पापम्।

so explained by Govinda-svāmin[1]. *Manu* declares a Brahmin who has voyaged across the Sea as one who pollutes the row of seats (paṅkti) at a feast.[2] As in Baudhāyana, so also in the Mānava Code provisions for sea-captains and ship-owners occur. These prove, according to Mr. Jayaswal, the increasing commercial enterprise of the Hindus in the third century B.C. (*vide Manu* VIII. 406). In *Yāj*. II. 250-264 new rules are formulated for companies formed for Sea-trade and Sea-voyages. *Uśanas Saṃhitā* (IV. 33-34)[3] declares that a Sea-goer is to be excluded from Śrāddha ceremonies. The total prohibition of Sea-voyages for the twice-born cannot but be connected with the historical circumstances set forth above and the growing religious obsession of the Hindu mind which is clearly imprinted on the later writings on Law and Usage. Certain writers choose to take the prohibition to apply to voyages performed to places of pilgrimage across the Sea.[4] But this construction is shown to be unreasonable by the other prohibition in the Kalivarjya Text XI which forbids social commerce with the twice-born who have journeyed across the Sea even after the performance of expiation.[5] The interpretation that Sea-voyage refers to pilgrimage to a holy place across the Sea such as Dwarakā, is met with in Nirṇaya-sindhu and in the Smṛti-Kaustubha.

1 द्वीपान्तरादाहृतं सामुद्रं वस्तु पण्यद्रव्यम्।

2 III. 158-167—एतान् विगर्हिताचारानपाङ्क्तेयान् द्विजाधमान्। द्विजातिप्रवरो विद्वानुभयत्र विवर्जयेत्॥

3 समुद्रयायी कृतघ्नः रथ्या-समयभेदकः···ते वर्ज्याः श्राद्धकर्मसु।

4 समुद्रेति तीर्थयात्रा निषिध्यते। तीर्थयात्रातिदूरतः इति माधवोदाहृतवचसैकमूलश्रुतिकल्पनालाघवात्।—Smṛti-Kaustubha.

5 (विहितप्रायश्चित्तम्) तदपि कलौ कर्त्तव्यमेवेति तत्करणानन्तरं तद्व्यवहारो निषिध्यते। एतच्च प्रायश्चित्तं रागप्राप्ते समुद्रयान एव। शङ्खोद्धारादितीर्थे यात्राविधिना अन्तरीयकं समुद्रयानम् अतो दोषाभावान्न प्रायश्चित्तम्। अत्र क्रत्वर्थमात्रनिषेधेऽपि न क्षतिः पुरुषार्थनिषेधान्तरसत्त्वात्।

—Kṛṣṇaın Bhaṭṭa on Nir. Sin.

Punishment of Witnesses in Disputes between Father and Son

This incident of archaic law appears to have become well-nigh obsolete by its very crudity and unsuitability to developed social condition, even before its formal prohibition in Brahma-purāṇa and Smṛtyarthasāra It was early felt to be suited only to the patriarchal state. Under *patria potestas* no action could be maintained between the father and the son. But with a change in the domestic status of persons along with the growth of society, it was necessarily modified. *Viṣṇu* (V. 119-120) formulates the primitive law.[1] A fine of ten *paṇas* was to be imposed on witnesses in disputes between father and son and the highest amercement on those who intervened in them as sureties for either party. *Yājñavalkya* (II. 242) versifies these two Sūtras with the difference that the fines in the two cases are ordained as three and twenty-four *paṇas* respectively.[2] But litigation between such parties cognisable by the King might arise. Hence Kauṭilya specifies persons who should be witnesses in such litigation and also states the penalty for the defeated party in mutual accusation between father and son.[3] *Nārada* says (I. 152): In family quarrels members of that family shall be witnesses.

Ordinarily such quarrels are not cognisable by the courts, so says *Bṛhaspati*.[4] An anonymous text similar to this is cited in Mitākṣarā on Yāj. II. 32. But, as both Vijñāneśvara and Jīmūtavāhana in Vyavahāra-mātṛkā point out, this rule is to be followed where the offence is of a minor character.[5]

1 पितापुत्रविरोधे तु साक्षिणां दशपणो दण्डः। यस्तयोश्चान्तरः स्यात् तस्योत्तमसाहसम्।

2 पितापुत्रविरोधे तु साक्षिणां त्रिपणो दमः। अन्तरे च तयोर्यः स्यात् तस्याप्यष्टगुणो दमः।

3 स्वामिनो भृत्यानामृत्विगाचार्य्याः शिष्याणां मातापितरौ पुत्राणां चानिग्रहेण साक्ष्यं कुर्युः तेषामितरे वा। परस्पराभियोगे चैषामुत्तमाः परोक्ता दशबन्धं दद्युरवराः पञ्चबन्धम्।

4 गुरुशिष्यौ पितापुत्रौ दम्पती स्वामिभृत्यकौ। एतेषां समवेतानां व्यवहारो न सिध्यति॥

5 अल्पापराधविषयम्।

Yāj. II. 5 defines litigation as what arises when one petitions the King, injured by *others* in violation of Smṛtis and usages.[1] Here according to the Mitākṣarā *others* (*paraiḥ*) exclude the relations aforesaid. When, however, the Śāstraic rules permitting a certain degree of punishment by the superior, etc. are exceeded, the King is bound to take cognizance. Also a vicious father may waste ancestral property or in punishment he may go beyond the limits prescribed by the sacred law.[2] In such cases no doubt witnesses may have to be produced and punishment meted out to the superior.[3]

Slaying of a Brahmin Aggressor

The killing of a Brahmin assailant in self-defence is an exception to the general rule that the Brahmin is immune from the punishment of death[4] and that the slaying of a Brahmin is a most heinous offence.[5] This principle is enunciated in *Baudhāyana* I. 10-18 and *Viṣṇu* V. 3-8.[6] The prohibition of this permissible self-defence which had testified to the growing juristic fairness of the early Hindus was the outcome of the accentuation of caste-privileges in

[1] स्मृत्याचारव्यपेतेन मार्गेणाधर्षितः परैः। आवेदयति चेद्राज्ञो व्यवहारपदं हि तत्॥

[2] पिता वा व्यसनाविष्टः सर्व्वस्वं वेश्याकिरातादिभ्यो दातुमिच्छति।—Vyavahāra-mātṛkā. पितामहोपात्ते भूम्यादौ पितापुत्रयोः स्वाम्ये समाने यदि पिता विक्रयादिना पितामहोपात्तं भूम्यादि नाशयति तदा यदि धर्म्माधिकरणं प्रविशति तदा पितापुत्रयोर्भवत्येव व्यवहारः।

[3] एवमादिव्यवहारो द्रष्टव्य एव अन्यथा अनुचितक्रियाप्रवृत्तस्य राज्ञोऽधर्म्मापत्तेः अवश्यं ज्ञात्वा दण्डस्य कर्त्तव्यत्वात्।—Vyavahāramātṛkā. As to the limits of domestic punishment Yama says :—

भार्य्या पुत्रश्च दासश्च दासी शिष्यश्च पञ्चमः। प्राप्तापराधास्ताड्याः स्युः रज्ज्वा वेणुदलेन वा॥
अधस्तात्तु प्रहर्त्तव्यं नोत्तमाङ्गे कदाचन। अतोऽन्यथा प्रवृत्तस्तु यथोक्तं दण्डमर्हति॥

[4] Baudh. Dh. S. I. X. 18—अवध्यो वै ब्राह्मणः सर्व्वापराधेषु।

[5] Vide §§ on संसर्गदोषः and स्तेयान्यमहापातकनिष्कृतिः।

[6] स्वदेशाद् ब्राह्मणं कृताङ्कं विवासयेत्। अन्यत्रापि वध्याकर्म्मणि तिष्ठन्तं समग्रधनमक्षतं विवासयेत्।—Viṣṇu *Cf*. Manu VIII. 380.

न जातु ब्राह्मणं हन्यात् सर्व्वपापेष्ववस्थितम्। राष्ट्रादेनं बहिष्कुर्य्यात् समग्रधनमक्षतम्॥

later times. The ancient law is stated by *Gautama* (VII. 25) who says that when life is in danger a Brahmin also may take up a weapon.[1] Here the term *api* (also) indicates that it was a general rule for all castes. *Baudhāyana Dh. S.* (I. 10. 11-14) also sets forth the same law and cites an ancient text to the effect that a teacher born in a worthy family, if he is an aggressor, may be killed; thereby one does not incur the sin of destroying a foetus for in such a case wrath meets wrath.[2] The law of self-defence is also enunciated in *Āpastamba Dh. S.* I. 29. 7. which declares it as an ancient law.[3] Assailants are of six kinds according to *Vasiṣṭha* (III. 15-18).[4] A restatement of the old law is contained in *Manu* VIII. 348-51[5] where a few more situations justifying the taking up of arms by the twice-born are mentioned, such as a quarrel over the sacrificial fee, defence of women; and not even the preceptor or a boy, an old man or a deeply learned Brahmin is to be spared. One of the justifying circumstances is, according to Manu, an attack upon Dharma, and this rule, in the opinion of Mr. Jayswal, refers to the social revolution in the time of the Mauryas. These provisions are repeated in *Viṣṇu*

1 प्राणसंशये ब्राह्मणोऽपि शस्त्रमाददीत ।

2 भीतोन्मत्त ....स्त्रीबालवृद्धब्राह्मणैर्न युध्येत । अन्यत्राततायिनः । अथाप्युदाहरन्ति । अध्यापकं कुले जातं यो हन्यादाततायिनम् । न तेन भ्रूणहा भवति मन्युस्तं मन्युमृच्छति, इति ।

3 यो हिंसार्थमभिक्रान्तं हन्ति मन्युरेव मन्युं स्पृशति न तस्य दोष इति पुराणे । His own view is : परीक्षार्थोऽपि ब्राह्मण आयुधं नाददीत ।

4 अग्निदो गरदश्चैव शस्त्रपाणिर्धनापहः । क्षेत्रदारहरश्चैव षडेते आततायिनः ॥
आततायिनमायान्तमपि वेदान्तपारगम् । जिघांसन्तं जिघांसीयान्न तेन भ्रूणहा भवेत् ॥
स्वाध्यायिनं कुले जातं यो हन्यादाततायिनम् । न तेन भ्रूणहा स स्यान् मन्युस्तं मन्युमृच्छति ॥

5 शस्त्रं द्विजातिभिर्ग्राह्यं धर्मो यत्रोपरुध्यते । द्विजातीनां च वर्णानां विप्लवे कालकारिते ॥
आत्मनश्च परित्राणे दक्षिणानां च संगरे । स्त्रीबालाभ्युपपत्तौ च घ्नन् धर्मेण न दुष्यति ॥
गुरुं वा बालवृद्धं वा ब्राह्मणं वा बहुश्रुतम् । आततायिनमायान्तं हन्यादेवाविचारयन् ॥

Also in Viṣṇu—

नाततायिवधे दोषो हन्तुर्भवति कश्चन । प्रकाशं वाप्रकाशं वा मन्युस्तं मन्युमृच्छति ॥

V. 185-186 corresponding to *Manu* VIII. 350-351. *Viṣṇu* distinguishes seven kinds of assailants.[1] *Yaj.* (II. 218) enacts a stricter law to the prejudice of persons other than Brahmins in cases of battery. He says further that the limb of a non-Brahmin who causes pain or hurt to a Brahmin is to be cut off; if raised in the act of striking, the first amercement; in case of touching weapons for such a purpose half of the above prescribed penalty is ordained.[2] *Yaj.* (first verse of 218 above) is in accord with Artha-śāstra (Ch. 76).[3] *Sumantu*, an early Smṛti-writer, is quoted by Viśvarūpa without comment, which indicates that in the time of Viśvarūpa the law as to the inviolability of the person of a Brahmin did obtain.[4] *Nārada* repeats the lenient penal provision in regard to Brahmins (XIV. 10).[5] In *Bṛhaspati* we find the general law coupled with the exception in favour of Brahmins, in the matter of capital punishment. In II. 15 he lays down the principle that by killing an aggressor a man does not commit sin by any means. He who takes the life of one approaching with intent to murder is no offender. As cited in Vivāda-Ratnākara *Bṛhaspati* provides the punishment of a Brahmin offender in the form of shaving of the head and banishment.[6] Other texts of *Bṛhaspati* forbid slaying of

1 उद्यतासिविषाग्निश्च शापोद्यतकरं तथा। आथर्व्वणेन हन्तारं पिशुनञ्चैव राजसु ॥
भार्य्यातिक्रमिणञ्चैव विद्यात् सप्तातताथिन:।

2 विप्रपीड़ाकरं छेद्यमङ्गमब्राह्मणस्य तु। उद्गूर्णे प्रथमो दण्ड: संस्पर्शे तु तदर्द्धिक: ॥
उद्गूर्णे हस्तपादे च दशविंशतिकौ दमौ। परस्परन्तु सर्व्वेषां शस्त्रे मध्यमसाहस: ॥

3 विशिष्टेषु द्विगुणा:। हीनेषु अर्धदण्डा:। Also शूद्रो येनाङ्गेन ब्राह्मणमभिहन्यात् तदस्य छेदयेत्।

4 नाततायिवधे दोषोऽन्यत्र गोब्राह्मणवधात्।

5 शिरसो मुण्डनं दण्डस्तस्य निर्व्वासनं पुरात्। ललाटे चाभिशस्ताङ्क: प्रयाणं गर्द्दभेन च॥

6 Cited in Viv.-Ratn.—

महापातकयुक्तोऽपि न विप्रो वधमर्हति। निर्व्वासाङ्कनं मौण्ड्यं च तस्य कुर्य्यान्नराधिप: ॥

Cited in Prāy.-viveka (p. 67)—

आततायिनमुत्कृष्टं व्रतस्वाध्यायसंयुतम्। यो न हन्याद् वधप्राप्तं सोऽश्वमेधफलं लभेत् ॥

a Brahmin given to Vedic study and born in a worthy family and praise the act of desisting from self-defence in such a case as equal in merit to the performance of Aśvamedha. Attempts to modify the earlier law of self-defence may also be traced in the commentaries. *Viśvarūpa* on Yāj. II. 221 attributes the ancient law to the Artha-śāstra and holds that it should yield to the rule of the Dharma-śāstra.[1] *Vijñāneśvara* commenting on the same śloka tries to show that this rule is a case of opposition between the rules of Artha-śāstra and Dharma-śāstra. *Sarvajñanārāyaṇa* seeks to soften the import of Manu, VIII. 350 by saying that the blow in self-defence must not be excessive and it was not to be given where the assailant was a Brahmin.[2] *Kullūka* on the same śloka says that striking in self-defence was to be done where it was not possible to save oneself by flight.[3] A text of Parāśara is quoted by a later commentator on the Nirṇaya-sindhu to the effect that to a slayer of a Brahmin the penance of pilgrimage to the sea-side should be prescribed by a learned Brahmin.[4] The abrogation of the right of self-defence against a Brahmin assailant in the Kalivarjya texts is the outcome of ideas that gained ascendancy in later times as shown by Devala above and Bhaviṣya-purāṇa (cited in Prāy.-viv., p. 66[5]). The tradition of inviolability of a Brahmin's person continued to British times. In early British days the Brahmin's immunity from death-sentence was

Cf. Devala cited in the same book—स्वाध्यायिनं कुले जातं न हन्यादाततायिनम्। निहत्वा भ्रूणहा न स्यादहत्वा भ्रूणहा भवेत्। (भ्रूणो ब्राह्मणविशेषः)

[1] यथार्थशास्त्रे व्यवहारप्रकरणे उक्तम्—नाततायिवधे दोषो हन्तुर्भवति कश्चन इति पुनर्धर्मशास्त्रे प्रायश्चित्तप्रकरणे कामतो ब्राह्मणवधे निष्कृतिर्न विधीयते इति।

[2] आततायिनं हननप्रवृत्तं हन्यादेव अङ्गच्छेदादिरूपघातेन न त्वत्यन्तमन्यत्र गोब्राह्मणात्।

[3] पलायनादिभिरपि स्वनिस्तरणाशक्तौ।

[4] चातुर्विद्योपपन्नस्तु विधिवद् ब्रह्मघातके। समुद्रसेतुगमनं प्रायश्चित्तं विनिर्दिशेत्।

[5] जिघांसन्तमपि गोविप्रं न हन्याद् वै कदाचन।

removed by statute as in Benares by Regulation XVII of 1817 (sec. xv). The significance of the change in law is shown in Lord Bentinck's Minute—"It is impossible to conceive a more direct and open violation of their Śāstras or one more at variance with general feelings of the Hindu population. To this day, in all Hindu states the life of a Brahmin, I believe, is still held sacred." (Life, in Rulers of India Series).

Theft from the Vile after Three Days' Fasting

The ancient Dharma Law permitted minor theft from a man of a low caste to a Brahmin in the last stage of indigence. Thus *Gautama* (XVIII. 32):[1] After going without the seventh meal, one may steal even from other than the vile. If questioned by the King, he should disclose all. If endowed with learning and right conduct, he should be maintained. Fasting at the ninth meal-time through poverty, a Brahmin may take away from one of uncondemned mode of life what is just enough to satisfy his hunger, and also from one of an approved mode of life (such as an Agnihotrin and a Soma-drinker). Thus Maskari explains Gautama. On this point Medhātithi quotes an anonymous Smṛti-text to the effect that one may take from a vile man first and failing such, from one of equal rank and on failure of that, from a distinguished man also.[2] *Āpas. Dh. Sū.*, II. 28. 13 lays down the same rule briefly and declares that the man who does so is not punishable.[3] As to the sort of produce that may be thus taken away,

[1] सप्तमीं चाभुक्त्वा निचयाय। अप्यहीनकर्मभ्यः। आचक्षीत राज्ञा पृष्टः। तेन हि भर्तव्यः श्रुतशीलसम्पन्नश्चेत्। धर्मतन्त्रपीडायां तस्य करणेऽदोषोऽदोषः।

[2] हीनादादेयमादौ स्यात्तदलाभे समादपि। असम्भवे त्वाददीत विशिष्टादपि धार्मिकात्। (under Manu XI. 16).

[3] अदण्ड्यः कामकृते तथा प्राणसंशये भोजनमाददानः।

specific directions are given in *Āpas. Dh. S.*, I. 28. 3.[1] The commentator Haradatta quotes a Smṛti text specifying the kinds of corn which may be so stolen, agreeing with *Āpas. Dh. S.* just cited.[2] Both *Manu* XI. 16-17[3] and *Yāj.* III. 43-44 embody this rule in their codes. *Yāj.* III. 41 lays down the general principle that no sin attaches to one in extreme distress, who roaming hither and thither so helps himself to what barely suffices to keep one alive.[4] This text agrees with *Manu* VIII. 341.[5] The same text is cited without mention of the source in Madanapārijāta, p. 231. The ban on this permissible minor theft by a distressed Brahmin is not known to the earlier comment ators like Medhātithi and Vijñāneśvara. It is found for the first time in Smṛtyarthasāra This irregular mode of acquisition is turned to account by Mitra-miśra in supporting the doctrine of the secular nature of ownership upheld by Dhāreśvara and Vijñāneśvara.[6] The license here permitted to a Brahmin in distress must have been a subject of discussion to jurists and moralists as proved by the above Vīr. Mit. passage. And although prohibited by Śrīdhara, the

1 शम्योषा युग्यघासो न स्वामिनः प्रतिषेधयन्ति ।

2 चणकव्रीहिगोधूमयवानां मुद्गमाषयोः अनिषिद्धैर्ग्रहीतव्या मुष्टिरेकाध्वनि स्थितैः ।

3 Manu XI. 16-17—तथैव सप्तमे भक्ते भक्तानि षडनश्नता । अश्वस्तनविधानेन हर्तव्यं हीनकर्मणः । खलात् क्षेत्रादगाराद्वा यतो वाप्युपलभ्यते । आख्यातव्यं च तत् तस्मै पृच्छते यदि पृच्छति ।

4 आपद्गतः संप्रगृह्णन् भुञ्जानो वा यतस्ततः । न लिप्येतैनसा विप्रो ज्वलनार्कसमो हि सः ।

5 *Cf*. Nārada XVIII. 39—द्विजोऽध्वगः क्षीणवृत्तिर्द्वाविक्षू द्वे च मूलके । आददानः परक्षेत्रान्न दण्डं दातुमर्हति । Also cited by Haradatta under Āp. Dh. S., I. xxviii. 3.

6 यद्यपि चौर्यस्य स्वत्वोत्पादकत्वं न लोकसिद्धं तथाप्यनेनैव सप्तमभक्ताशनकाले षड्भक्तानशिनोऽप्यभिधानाद् गम्यते । स्वत्वमात्रस्य हि शास्त्रीयत्वं विरुद्धमतज्ञानां क्रयादिस्वत्वसाध्यव्यवहारानुपपत्तेः । अतश्चौर्यनिषेधो दण्डोपायमात्रबोधक एव । Vīr. Mit., Ch. I. 348 (G. Śāstrī's Edn.).

usage has not become wholly extinct. Jayswal remarks: "If a hungry man took a handful from a field it was no theft. This is a living law in the villages up to this time."[1] Only the license has now merged in the larger law of charity.

Marriage with the Maternal Uncle's Daughter

The usage of marrying the maternal uncle's daughter or the father's sister's daughter has been a subject of controversy since the earliest times and yet has lived down to the present age with as much persistence as the controversy itself. The Vīramitrodaya in the section Saṃskāra-Prakāśa sets forth the arguments for and against the practice at some length. The Vedic texts cited therein as bearing upon it are the following:

(1) Come, Oh Indra! by ways lauded, to this sacrifice of ours and accept with grace your own share—the omentum treated with clarified butter which is offered by the priests, like the maternal uncle's daughter and the father's sister's daughter (the share of a person).[2] The original of this text as can be found out from Ṛk-Prātiśākhya is not in the Ṛgveda and hence is referred to the Ṛk-Pariśiṣṭa.

(2) The God who makes all forms and sends all good and evil and pervades all and is the generous giver will make the issue—brother and sister—born of our wombs, man and wife. For the doings of this (Prajāpati) none resents or undoes and his doings in us (in creating son and daughter who would mate) neither the earth nor heaven know.[3]

[1] Manu and Yājñavalkya.

[2] आयाहीन्द्र पथिभिरीळितेभिर्यज्ञमिमं नो भागधेयं जुषस्व।
तृप्तां जहुर्मातुलस्येव योषा भागस्ते पैतृष्वसेयी वपामिव।

[3] गर्भे तु नौ जनिता दम्पती कर्द्देव त्वष्टा सविता विश्वरूपः।
नकिरस्य प्रमिनन्ति व्रतानि वेद नावस्य पृथिवी उत द्यौः।

(3) Hence from the same male, the eater and the eaten are born, in the third degree (counted from the original ancestor) or in the fourth we shall unite.[1] The Southerners infer Vedic injunctions from this Mantrārthavāda (मन्त्रार्थवाद) and add that it must not be apprehended that the inference of injunctions will be wrongly extended to such passages as: Prajāpati ran after his own daughter like a woman after her paramour[2], since such cases proceed from natural inclination.

From Ṣaṭtriṃśanmatam and Caturviṃśatimatam texts are cited which are claimed to be based on the Śruti: Manu, Vyāsa, Aṅgirasa, and Yama have declared that the third or the fourth on the two sides one should marry.[3] Paurāṇic precedents also are referred to. Thus a śloka in the *Bhāgavata* says that Rukmī insulted by Kṛṣṇa, though remembering the enmity, gave away his daughter to his sister's son in order to do her a pleasure.[4] Another śloka in the same work says that Rukmī in order to please his sister bestowed his son's daughter, a pleasing damsel, to his daughter's son, Aniruddha, although of rooted enmity to Hari, being bound by the chains of love, not knowing it to be according to the sacred law relating to marriage.[5] Of the last line of this passage the proper construction, according to Southern writers, consistently with the intention of Vyāsa is—"gave away not because he knew it to be according to the sacred law pertaining to the sexes but being bound by the

[1] तस्मात् समानादेव पुरुषादत्ता चाद्यश्च जायेते ।
तृतीये संगच्छावहा उत चतुर्थे संगच्छावहै ।

[2] प्रजापति: स्वां दुहितरमभ्यधावद् योषा जारमिव प्रियमित्यादि ।

[3] तृतीयां वा चतुर्थीं वा पक्षयोरुभयोरपि । विवाहयेन् मनु: प्राह पाराशर्य्योऽङ्गिरा यम: ।

[4] यद्यप्यनुस्मरन् वैरं रुक्मी कृष्णावमानित: । व्यतरद् भागिनेयाय सुतां कुर्व्वन् स्वसु: प्रियम् । X. lxi. 23.

[5] दौहित्रायानिरुद्धाय पौत्रीं रुक्म्याददद्धरे: । रोचनां बद्धवैरोऽपि स्वसु: प्रियचिकीर्षया । जानन्न धर्म्मं तं यौनं स्नेहपाशानुबन्धत: । X. lxi. 25

snare of affection." In the Mahābhārata also there is the case of the marriage of Subhadrā by Arjuna who was her father's sister's son. Besides it is argued that the uninterrupted observance of the usage by generations of worthy men in society in the South should prove its Śāstraic origin.

Writers on the sacred law of the North, East and West demur to these arguments. The reading and interpretation of the Vedic texts are disputed. Thus the first text as read[1] and interpreted[2] by Aparārka is quite different.

The second text according to Vidyāraṇya means—"The God made us (while in the womb) man and wife." Support to this construction is lent, according to the Vīramitrodaya, by what is found later in the same Sūkta. Here the dialogue between Yama and Yamī is the context in which Yama in the end refuses the offer of Yamī saying: Oh blessed one, I shall not unite my body with yours. Men and Gods call him a sinner who goes in unto his sister. Hence how can I have such satisfaction?[3]

In regard to the third text the argument of those who dissent is that it is reasonable to conclude that this Vedic text is the root of the Smṛti rule[4]: Count from him from whom the lines diverge. And the Caturviṃśatismṛti deduces the same purport. It must not be explained as tending to

[1] आयाहीन्द्र पथिभिरीळितेभिर्यज्ञमिमं नो भागसातौ जुषस्व। तृप्तां जहुर्मातुलस्येव ते तव भागः पैतृष्वसेयीमपामिवौघः।

[2] ये ते सोमपतयो भवता सहायातास्ते सकृत्सोमपानेन तृप्ताः सन्तः सोमं जहुस्त्यक्तवन्तः। किमिव, यथा पैतृष्वसेयीं भगिनीं भार्यात्वेन अत्यन्तानभिलषणीयां त्यजन्ति स्वकीयमातुलस्य सम्बन्धायोग्यतया, तद्वद्भवदुद्देशेन सोमं त्यक्तवन्तो निराकाङ्क्षतया। यदपि श्रुतौ 'तृतीयं पुरुषं गच्छामहे' इति तदपि सगोत्रव्यूहनपरत्वेन अन्यार्थत्वात्। Aparāika on Yāj. I. 53.

[3] न वा उते तन्वा तन्वं सम्पपृच्यां पापमाहुर्यः स्वसारं निगच्छात्। अन्येन मत्प्रमुदः कल्पयस्व न ते भ्राता सुभगे वष्ट्येतद् इति।

[4] यतो वंशभेदस्समादाय गणयेदित्यादि स्मृतिमूलत्वमेवास्याः श्रुतेः कल्पयितुं युक्तम्। उपसंहृतश्चायमर्थश्चतुर्विंशतिस्मरणेऽपि। नेदं मातुलकन्यापरिणयपरत्वेन व्याख्येयं ... ... किन्तर्हि द्विपुरुषसापिण्ड्यकीर्तनं प्रतिलोमजविषयं व्याख्येयम्।

the marriage of the maternal uncle's daughter but as declaring Sāpiṇḍya relationship to the second degree in case of the issue of Pratiloma union.

In spite of these laboured and ingenious attempts to explain away the Vedic texts upon which the usage rests, its prevalence from the earliest times is undeniable. *Śatapatha Brāhmaṇa* which pertains to the Vājasaneyī Saṃhitā has in I. viii. 3-6 a passage corresponding to the third text quoted above, and it has been thus rendered in S.B.E:

Thus the separation (of the eater and the eaten) is effected in one and the same act: and hence from one and the same man spring both the enjoyer (the husband) and the enjoyee (wife) for now kinsfolk (jātyāḥ) live sporting and rejoicing together, saying "In the fourth (or) third man (that is generation) we unite." On this passage the commentator Harisvāmin remarks: The Kāṇvas allow inter-marriage in such cases from the third generation; the Kāṇva text of Śat. Br. reads—'In the third man we unite, in the fourth man we unite'; and the Saurāṣṭras from the fourth generation and also the Dākṣiṇātyas allow marriage with the daughters of the mother's brother and with sons of the father's sister. It would seem that the prohibition of marriage between near kinsfolk (Āp. Dh. Sūtra II. xi. 15-16)[1] and the avoidance of a spouse of the same Gotra or a Sapiṇḍa of one's mother (Gobhila III. iv. 3-5)[2] were not firmly established.[3]

But since the age of the Kalpasūtras disapproval of the practice has been frequently expressed. Thus *Baudhāyana*,

[1] सगोत्राय दुहितरं न प्रयच्छेत्। मातुश्च योनिसम्बन्धेभ्यः।

[2] दारान् कुर्व्वीतासगोत्रान्। मातुरसपिण्डा।

[3] *Cf.* Paiṭhīnasi—त्रीन् मातृतः पञ्च पितृतो वा—which is the utmost limit according to the Smārtas. In Vaśiṣṭha VIII पञ्चमीं मातृबन्धुभ्यः सप्तमीं पितृबन्धुभ्यः prescribes the accepted rule.

I. i. 18 *et seq.*, showing the disagreement between Northern and Southern practices, mentions the instance of the marriage of the mother's brother's daughter and the father's sister's daughter as peculiar to the South and declares that a usage is valid in the country to which it is peculiar but reprehensible elsewhere.[1] But this principle of the validity of a local usage was not undisputed. *Baudhāyana* himself cites the objection of Gautama and disapproves of both connections.[2] Smṛti-candrikā an early Southern digest makes a significant comment on this objection of Gautama and seeks to justify the practice of the South.[3]

The validity of local custom is upheld amongst the later Smṛtikāras by *Bṛhaspati* in the section Prakīrṇaka xxvii. 19: Forbidden practices are found among the Southerners in the present day, (such as) matches with the maternal uncle's daughter, inspite of the prohibited degree of relationship on the mother's side (causing such unions to be illegal). Also in Chapter IV. xxvii and xxix he says: The time-honoured institutions of each country, caste and family should be preserved. The maternal uncle's daughter is taken in marriage among the twice-born inhabitants of the South.

[1] पञ्चधा विप्रतिपत्तिर्दक्षिणतस्तथोत्तरतः। यथैतदनुपनीतेन सह भोजनं मातुलपितृष्वसृदुहितृगमनम् इति। तथोत्तरत ऊर्णाविक्रयः सीधुपानमुभयतोदद्भिर्व्यवहार आयुधीयकम् समुद्रयानमिति। इतरदितरस्मिन् कुर्व्वन् दुष्यति इतरदितरस्मिन्। तत्र तत्र देशप्रामाण्यमेव स्यात्।

[2] मिथ्यैतदिति गौतमः। उभयञ्चैव नाद्रियेत शिष्टागमविरोधदर्शनाच्छिष्टस्मृतिविरोधदर्शनाच्च।

[3] इतरो दाक्षिणात्य इतरस्मिन् उत्तरदेशे मातुलसम्बन्धादिकं कुर्व्वन् दुष्यति न तु स्वदेशे। यत्तु बौधायनेन देशप्रामाण्यमित्येवमन्तमुक्त्वा उक्तम्—"मिथ्यैतद......दर्शनाच्च" इति तत्र, पूर्व्वोक्तनिराकरणार्थं गौतमग्रहणात्। किन्तु शिष्टस्मृतिविरोधदर्शनाद् गौतमस्य मातृसपिण्डापरिणयनमनभिप्रेतमिति दर्शयितुम्। एवं यदुक्तमन्यैः स्यादेवं यद्यनन्तरमेव मिथ्यैतदिति न ब्रूयात् इति तदप्यपास्तम्। तेन श्रुतेः स्मृतेराचाराच्च सिद्धं मातुलदुहितृपैतृष्वसेयोपरिणयनमिति सर्व्वमनवद्यम्।
—Saṃskāra-kāṇḍa, pp. 199-200.

But against these stand the series of utterances of the authors of the versified Smṛtis. *Manu* prescribes the penance Cāndrāyaṇa for marriages of this nature.[1] Such is the view of *Uśanas* IX. 3, 4.[2] and also of *Śātālapa*.[3] *Sumantu* prescribes the same expiation.[4] *Paiṭhīnasi* enjoins the avoidance of brides so related since they are sisters according to the sacred law.[5]

These Smṛti texts are, however, construed by the Southerners as applying to the issue of Āsura and other disapproved forms of marriage which do not sever the Sagotra and Sapiṇḍa relationship of a girl with her father's family. They do not apply to the issue of Brāhma and other approved forms of marriage which effect such severance just like the institution of adoption. These texts are not, therefore, altogether deprived of their scope or left without application. In support of this contention a passage from the Mārkaṇḍeya Purāṇa is turned to account.[6]

To this contention the Northern exponents of the Dharma-śāstras replied that there is no express word declaring the cessation of Sapiṇḍa relationship in Brāhma marriage. As for the severance from the father's Gotra, Āsura and other disapproved forms of marriage also cause it. Further

[1] पैतृष्वसेयीं भगिनीं स्वस्त्रीयां मातुरेव च। मातुश्च भ्रातुरात्मस्य गत्वा चान्द्रायणं चरेत् ॥
—Manu XI. 172. Also Uśanas IX. 3-4.

[2] उद्वहेत्तु सगोत्रां यस्तनयां मातुलस्य च। ऋषिभिश्चैव तुल्यां च स तु चान्द्रायणं चरेत् ॥

[3] मातुलस्य सुतामूद्वा मातृगोत्रां तथैव च। समानप्रवराञ्चैव द्विजश्चान्द्रायणं चरेत्।
—in Vīr. Mit.

[4] पितृष्वसृसुतां मातृष्वसृसुतां मातृसगोत्रां समानप्रवरांश्च विवाह्य चान्द्रायणं चरेत्।
—in Vīr. Mit.

[5] कुलोत्पन्नां साध्वाचारां वरयेत् पितृष्वसृमातृष्वसृदुहितरौ मातुलसुता च धर्म्मतस्ता भगिन्यो वर्जयेत्।—in Vīr. Mit.

[6] ब्राह्मादिषु विवाहेषु यानूढ़ा कन्यका भवेत्। भर्तृगोत्रेण कर्त्तव्यास्तस्याः पिण्डोदकक्रियाः ॥
आसुरादिविवाहेषु पितृगोत्रेण धर्म्मवित्।—in Vīr. Mit.

there are texts which negative the view that Sapiṇḍa relationship ceases in Brāhma marriage.[1] The performance of the obsequies of the maternal grand-father is enjoined on the part of the issue of all marriages. The Putrikā-putra, it may be pointed out, is regarded as continuing in the lineage of his maternal grand-father.[2]

Approval and disapproval of the usage have not been divided according to the province to which the writer belonged. Kumārila Bhaṭṭa, although he flourished in the South, condemns the usage in clear and emphatic language.[3] Aparārka commenting on Yājñavalkya I. 53 cites the authority of Vaśiṣṭha and holds that a usage is valid if only it is not opposed to the Veda and should not simply as such be blindly followed.[4] Govindarāja the commentator of Manu who flourished about 1050-1080 in the North says that the prohibition of marriage into the mother's line pertains to the case of Putrikā-putra.[5] Again he opines that its purport is the avoidance of the maternal uncle's daughter begotten by *niyoga*.[6] Hemādri quotes a text of the Brahma-purāṇa setting forth the Kali ban on this sort of union along with four other practices.[7] Upon this Kamalākara comments

1 पितरो यत्र पूज्यन्ते तत्र मातामहा अपि । अविशेषेण कर्त्तव्यं विशेषान्नरकं व्रजेत् ।
in Vīr. Mit.

2 कात्यायनसंहिता—मातुः प्रथमतः पिण्डं निर्वपेत् पुत्रिकासुतः । द्वितीयन्तु पितुस्तस्यास्तृतीयन्तु पितुः पितुः । XVI. 23.

3 Tantra-vārttika—I. 3. स्वमातुलसुतां प्राप्य दाक्षिणात्यस्तु तुष्यति ।

4 After citing Vaśiṣṭha—देशकुलाचारा आम्नायाविरुद्धाः प्रमाणम् । आम्नायो वेदः तदविरोधोऽस्तीति चेत्, नैतत् । भगिन्यादिगमनेऽपि तदविरोधदर्शनादतिप्रसक्तेः । तस्मात् नान्धपरम्परान्यायागतस्य व्यवहारस्य प्रामाण्यम् ।

5 मातृगोत्रपरिणयननिषेधः पुत्रिकापुत्रविषयः । यतः पाणिग्रहणिका मन्त्राः पितृगोत्रापहारकाः ।

6 मातुलसुता-परिणयननिषेधो नियोगोत्पादितमातुलसुताग्रहणार्थः ।

7 गोत्रान्मातुः सपिण्डाच्च विवाहो गोवधस्तथा । नराश्वमेधौ मद्यञ्च कलौ वर्ज्यं द्विजातिभिः ॥
—Cāt. Cintā. Pariśeṣa-khaṇḍa, Ch. IV.

that the texts sanctioning such marriages referred to previous ages; in the Kali age they are not valid.[1]

Maskari, the commentator of Gautama, thus disapprovingly remarks that the inference of a Vedic text in support was uncalled for seeing that matches of this sort originated from the desires of men.[2] Nṛsiṃhaprasāda which was compiled by Dalapati, a minister of Ahmad, the Nizamshahi ruler of Devagiri (1490-1508) or his son Burha (1508-1533), while dealing with the topic Kalivarjya in the section Saṃskārasāra says that in reality marriage with the maternal uncle's daughter being sanctioned by the Veda is not reprehensible.[3]

Mādhavācārya's position is ambiguous. As pointed out by MM. Candrakānta Tarkālaṅkāra in his notes on Parāśara-mādhava, he approves of it in one place and disapproves of it in another.[4]

The Paurāṇic precedents of Aniruddha and Arjuna are set down by Mitramiśra as violations of the sacred law but excusable on the ground formulated by Gautama.[5] But they are not to be imitated in later ages in which, as remarked long ago by Āpastamba, the senses of men are weak.[6] And

[1] गोत्राद् गोत्रजायाः पितृष्वसुः मातृसपिण्डात् मातुलात् तत्कन्यायाः विवाहः कलौ न कार्य्यः। तेन यानि तद्विधायकवाक्यानि तानि युगान्तरविषयाणि। तथा च व्यास.—तृतीयां मातृतः कन्या तृतीयां पितृतस्तथा। शुल्कं न चोद्वहिष्यन्ति विप्राः पापविमोहिताः।

[2] यत्तु पितृष्वसृमातुलसुतापरिणयनादौ प्रीत्युपलब्धितः प्रवृत्तिर्न तत्र उत्सन्नपाठं शास्त्रमनुमीयते, प्रीतेरेव प्रवृत्तिहेतोः संभवात्।

[3] वस्तुतस्तु मातुलसुतापरिणयनं वेदाभिहिततया न दोषः।—संस्कारसारः।

[4] न्यायमालायां संग्रहे प्रवृत्तो ग्रन्थकारो मातुलकन्यापरिणयाचारस्य अप्रामाण्यं मीमांसकाचार्य्यस्य वार्त्तिककारस्यानुमतमेव संजग्राह। अत्र तु दृश्याचारस्य स्मृतिसिद्धतया प्रामाण्यमेव स्वस्यानुमतं व्यवस्थापयामास इति कथञ्चित् समाधानम् आस्थेयं धीमद्भिः। (A. S. B. Edn., p. 474—Parāśara-mādhava). न्यायमाला I. 3. 5. तस्मादीदृशस्याचारस्याप्रामाण्यमभ्युपेयम्।

[5] दृष्टो धर्म्मव्यतिक्रमः साहसञ्च महताम्।

[6] अवरदौर्बल्यात्। तदिन्द्रियदौर्बल्याद् विप्रतिपन्नम्। II. xxvii. 4.

he further quotes a text to the effect that the deeds of the gods and sages are not to be attempted by men who are to do what is prescribed for them.[1] The *Bhāgavata* also declares that like the fire which consumes everything persons of the highest spiritual power are not open to blame.[2] Mitra-miśra is, therefore, clearly of opinion that this usage is a breach of the established marital rules as to prohibited degrees. And he supports himself by the authority of Bṛhaspati cited above and by Vyāsa's own condemnation of the practice as one that will come into vogue in the degenerate Kali age.[3] Kṛṣṇam Bhaṭṭa in his note on the Nirṇaya-sindhu says that Vedic texts no doubt support the usage and admits that the Paurāṇic precedents belong to the first part of the Kali age, but quotes verses to the effect that these irregular practices were prohibited at the end of the Aśvamedha sacrifice performed by Janamejaya.[4] Dāmodara Bhaṭṭa says that the usage is sanctioned by Śruti, Smṛti and the conduct of the worthy.

By its prohibition the texts of Manu and the other law-givers are rendered applicable to the present Kali age. So he concludes by saying that although the practice has been elaborately defended by the author of the Candrikā, by Mādhava Bhaṭṭa, Someśvara and others, it was condemned by Prabhākara in his Ṭīkā on Śāstra-dīpikā. This usage clearly proves the persistence of custom even in the face of clear texts of law. Since the time of the codes it has been repeatedly cried down and yet it is so deeply rooted that

[1] अनुष्ठितन्तु यद्देवैर्मुनिभिर्यदनुष्ठितम्। नानुष्ठेयं मनुष्यैस्तदुक्तं कर्म्म समाचरेत्।

[2] तेजीयसां न दोषाय वह्नेः सर्व्वभुजो यथा।

[3] तृतीयां मातृतः कन्यां तृतीयां पितृतस्तथा। शुल्केन चोद्वहिष्यन्ति विप्राः पापविमोहिताः।

[4] विहितान्यपि कर्म्माणि धर्म्मलोपभयाद् बुधैः। समापने निवृत्तानि साध्वभावात् कलौ युगे। समापने जनमेजयाश्वमेधसमाप्तौ। But *vide* K. V. Text XIII where the reading is समयेन।

nothing has been able to shake it. The Nāmbudris, among whom the practice obtains, are the highest class of Brahmins in Malabar.

Inter-caste Marriage

In Vedic society there was considerable freedom in regard to inter-caste marital relations. Hypergamy or *anuloma*-marriage by the three upper castes was usual in the remotest times at least to a degree permitted by the Dharma-sūtras. *Pāraskara-gṛhya*-sūtra and *Bṛhaddevatā* regard this as normal. A Śūdra woman might marry a member of any of the four castes. Rules to the contrary (*e.g.*, *Gobhila* III. ii. 32) are for special reasons. Vatsa and Kavasa are reproached as sons of a Śūdrā and a Dāsī respectively (Panc. Brāh. xiv. 6. 6 and Ait. Brāh. XI. 19. 1), which, however, proves the occurrence of these marriages. But a gradual stiffening of the prohibition against this kind of marriage is traceable from the earliest sacred literature. Marriages between members of the regenerate classes were common. *Pāras. Gṛ. S.* I. iv. 8-11 states the law thus: Three (wives are allowed) to a Brāhmin in accordance with the order of the castes. Two to a Rājanya. One to a Vaiśya. One Śūdra wife, besides, to all according to some (teachers) without using mantras (at the ceremonies of wedding, etc.). *Bṛhaddevatā* V. 79 shows that inter-marriage was normal between Brahmins and Kṣatriyas. Śyāvāśva, grand-son of the sage Atri, wanted to marry the daughter of King Rathavīti but was refused her hand till he became a sage himself. Possibly the three upper orders were kindred in blood. They participated in Vedic rites and sacrifices and pronounced Mantras. "Truly whoever sacrifices sacrifices after becoming a Brāhmaṇa, as it were. Let him therefore, begin it (that is Aśvamedha) in spring" (*Śat. Br.* XIII. iv. 50. 3). He thus produces the Kṣatra from out of the Brāhmaṇa, for from out of the priesthood the nobility is

produced (*Śat. Br.* XII.vii.3.12). But marriage between an Ārya and a Śūdra woman was for pleasure and was regarded as reprehensible from an early date.[1]

Gobhila lays down rules (III. 2. 5. 2) to interdict the practice but these are for special reasons. *Āpastamba* does not provide for hypergamy or its issue. An Aryan attached to a Śudrā is to be banished. Co-habiting with her entails penance. The issue of such a union are not to be invited to *Śrāddhas*. Exchanging glances with a Śūdra woman causes suspension of Vedic study.[2] According to *Gautama* the son by a Śūdra wife, if serviceable to his father who has no other issue, should be maintained.[3] *Baudhāyana* regards marriage with a Śūdrā and procreation on her as a sin calling for penance. It is a degrading sin or *patanīya*.[4] Such a connection for twelve years reduces a man to Śūdrahood.[5] A night in the company of a dark-skinned wife is expiable by three years' penance.[6] At the same time he sets forth the mode of division of the heritage amongst sons by wives of different castes.[7] These passages hold in them the germs of the divergent views on inter-caste marriages found in later codes. Thus *Manu* III. 17 declares how such a union

[1] रामा रमणायोपेयते न धर्माय कृष्णजातीया—Yāska's Nirukta.

[2] Āp. Dh. S. II. 27. 8. नास्य आर्यः शूद्रायाम् । II. 17. 21. शूद्रोत्पन्न...... श्राद्धे भुञ्जानाः पंक्तिदूषणाः । I. 26. 7. शूद्रायां रेतः सिक्त्वा......अपः स्पृशेद् वारुणीभिर्वान्यैर्वा पवित्रमन्त्रैर्यथा कर्माभ्यासः । I. 9. 11. शूद्रायां प्रेक्षणप्रतिप्रेक्षणयोरेवानध्यायः ।

[3] XXVIII. 40. शूद्रापुत्रोऽप्यनपत्यस्य शुश्रूषुश्चेल्लभेत वृत्तिमूलमन्तेवासिविधिना ।

[4] II. i. 55.

[5] II. iii. 59 उदपानोदके ग्रामे ब्राह्मणो वृषलीपतिः । उषित्वा द्वादशसमाः शूद्रसाधर्म्यमृच्छति ।

[6] यदेकरात्रेण करोति पापं कृष्णं वर्णं ब्राह्मणः सेवमानः । चतुर्थकाल उदकाभ्यवायी त्रिभिर्वर्षैस्तदपहन्ति पापम्—II. i. 59.

[7] II. ii. 10. नानावर्णस्त्रीपुत्रसमवाये दायं दशांशान् कृत्वा चतुरस्त्रीन् द्वावेकमिति यथाक्रमं विभजेरन् 11. औरसे तूत्पन्ने सवर्णास्तृतीयांशहराः । 12. सवर्णापुत्रानन्तरापुत्रयोरनन्तरापुत्रश्चेद् गुणवान् स ज्येष्ठांशं हरेत् । गुणवान् हि शेषाणां भर्ता भवति ।

degrades a Brahmin.[1] This śloka is taken by Kullūka to refer to the case of one who has no other issue than the Śūdra wife's. Again his interdiction of the Śūdra wife in III. 14 has been taken as applying to a violation of the strict order in which marriages with women of lower castes should be contracted.[2] At the same time directions are given as to how such marriages should be contracted.[3] Further, giving the Brahmin son a preferential share, he divides the remaining property amongst the issue of inter-caste marriages in the proportion 3 : 2 : 1. *Vaśiṣṭha* also disfavours the marriage of a Śūdra wife.[4] He gives to the issue of such a marriage the lowest position and a share according to Manu's proportion. According to the unpublished Uśanas Dharmasūtra Sec. IV, a Brahmin's son by a Kṣatriyā or a Kṣatriya's by a Vaiśyā or a Vaiśya's by a Śūdrā belongs to the father's caste (Jolly—Law and Custom, p. 136). *Uśanas* Saṃhitā (IV. 44-46) prescribes periods of *aśauca* upon death of relatives of other castes. Another phase is represented by *Viṣṇu* XVI. 2 according to which the issue of hypergamy belong to the mother's caste.[5] *Viṣṇu* Smṛti while disapproving of the usage proves its prevalence (XVIII. 1-40).[6] He works

[1] शूद्रां शयनमारोप्य ब्राह्मणो यात्यधोगतिम् । जनयित्वा सुतं तस्यां ब्राह्मण्यादेव हीयते । III. 17.
हीनजातिस्त्रियं मोहादुद्वहन्तो द्विजातयः। कुलान्येव नयन्त्याशु ससन्तानानि शूद्रताम् ॥ III. 15.
शूद्रावेदी पतत्यत्रेरुतथ्यतनयस्य च शौनकस्य सुतोत्पत्त्या तदपत्यतया भृगुः ॥ III. 16.

[2] न ब्राह्मणक्षत्रिययोरापद्यपि हि तिष्ठतोः। कस्मिंश्चिदपि वृत्तान्ते शूद्रभार्य्योपदिश्यते। III. 14.
पूर्व्वं सवर्णानुक्रमेणानुलोम्येन विवाहाभ्यनुज्ञानात् अयं निषेधः प्रातिलोम्येन विवाहविषयो बोद्धव्यः।
Kullūka on Manu III 14.

Vide also शूद्राविवाहः सर्व्वेषामनुज्ञातत्वात् न गर्हितः स च कृतसजातीयापरिणयस्यानुज्ञातः। अतोऽसत्यां सजातीयायां वृषल्या भर्त्ता प्रतिषिध्यते--Medhātithi on III. 155.

[3] III. 12, III. 14. सवर्णाग्रे द्विजातीनां प्रशस्ता दारकर्म्मणि। कामतस्तु प्रवृत्तानामिमाः स्युः क्रमशोऽवराः। शरः क्षत्रियया ग्राह्यः प्रतोदो वैश्यकन्यया। वसनस्य दशा ग्राह्या शूद्रयोत्कृष्टवेदने ॥

[4] शूद्रायामप्येके मन्त्रवर्ज्जम्। तदु तथा न कुर्य्यात्। अतो हि ध्रुवं कुलापकर्षः। प्रेत्य चास्वर्गः। *vide* Kane, p. 114.

[5] अनुलोमास्तु मातृवर्णाः।

[6] अथ ब्राह्मणस्य वर्णानुक्रमेण चतस्रो भार्य्या भवन्ति। XXIV. 1. द्विजस्य भार्य्या शूद्रा तु न धर्म्मार्थे भवेत् क्वचित्। XXVI. 5.

out Manu's principle of division with minuteness, according as the father is of a caste other than the Brāhmaṇa or as there are several sons or none at all of a particular caste and so on. The Śūdra son never conduces to spiritual ends and is never allowed the whole property of his father.

Gautama (generally held to be of an earlier date than most of the Dharmasūtra-kāras) is more favourable to the Kṣatriya and Vaiśya son (XXVIII. 35-38 : *Cf*. Baudh. II. ii. 3-12). He lays down rules as to periods of mourning and performance of obsequies for the issue of such marriages,[1] and also the mode of division of the patrimony among them.

Kauṭilya unlike Manu IX. 155 allows a share to the son of a man of the regenerate classes by a Śūdra wife when sons of higher castes exist or one-third when there are none. He does not condemn inter-caste marriages.[2]

Although enumerating the issue of the union of different castes *Yājñavalkya* declares himself strongly against mixed marriages with Śūdras.[3] *Saṅkha* is even more emphatic in condemning such unions.[4]

[1] Viṣṇu XIX. 4. न द्विजम् पितरमपि शूद्राः (निर्हरेयुः)। XXII. 18. पत्नीनां दासानामानुलोम्येन स्वामिनस्तुल्यमाशौचम्। 21. ब्राह्मणस्य क्षत्रविट्शूद्रेषु सपिण्डेषु षड्रात्रत्रिरात्रैक-रात्रैः। XVIII ब्राह्मणस्य चतुर्षु वर्णेषु चेत् पुत्रा भवेयुस्ते पैतृकं रिक्थं दशधा विभजेयुः। तत्र ब्राह्मणीपुत्रश्चतुरोऽंशानादद्यात्। क्षत्रियापुत्रस्त्रीन्। द्वावंशौ वैश्यापुत्रः। शूद्रापुत्रस्त्वेकम्।

[2] चातुर्वर्ण्यपुत्राणां ब्राह्मणीपुत्रश्चतुरोऽंशान् हरेत्, क्षत्रियापुत्रस्त्रीन् अंशान्, वैश्यापुत्रो द्वावंशौ, एकं शूद्रापुत्रः। तेन त्रिवर्णपुत्रविभागः क्षत्रियवैश्ययोर्व्याख्यातः। ब्राह्मणस्यानन्तरापुत्रस्तुल्यांशः। क्षत्रियवैश्ययोरर्धांशः। तुल्यांशो वा मानुषोपेतः। ब्राह्मणानां तु पारशवस्तृतीयमंशं लभेत। द्वाऽंशौ सपिण्डः कुल्यो वासन्नः स्वधादानहेतोः। Arthaśāstra, Chap. 63.

[3] तिस्रो वर्णानुपूर्व्येण द्वे तथैका यथाक्रमम्। ब्राह्मणक्षत्रियविशां भार्याः स्वा शूद्रजन्मनः। यदुच्यते द्विजातीनां शूद्राद्दारोपसंग्रहः। न तन्मम मतं यस्मात् तत्रात्मा जायते स्वयम्।

[4] Śaṅkha, IV. 6-8. For Brahmins, Kṣatriyas, Vaiśyas the wives are 3, 2 and 1 respectively. 9. भार्यापि न कर्तव्या शूद्रा भार्या द्विजन्मना। यस्यां तस्य प्रसूतस्य निष्कृतिर्न विधीयते॥

Kātyāyana like Śaṅkha elaborates the topic of participation by wives of different castes in the husband's sacred duties.[1] The Saṃhitā of *Uśanas* deals with the question of impurity upon death as between persons related through mixed marriages.[2] Among the later law-givers *Vyāsa* also opposes a marriage between a Sūdra woman and a man of the regenerate classes.[3]

Yama holds that three days' impurity ensues upon a Brahmin cohabiting with a Śūdra.[4] *Paiṭhīnasi* regards the contraction of such a marriage as the opinion of some.[5] Penance for it is laid down in Caturviṃśati-matam (137-139—Benares Sanskrit Series). The later commentators and writers of digests are unanimous in prohibiting the inter-mixture of castes with the exception of Medhātithi,[6] and Vijñāneśvara.[7] Mixed marriages are mentioned without disapproval by the Dāyabhāga (Ch. IX), Smṛti-candrikā (II. 2.

[1] वर्णज्येष्ठ्येन बह्वीभिः सवर्णाभिश्च जन्मतः। कार्य्यमग्निच्युतेराभिः साध्वीभिर्मथनं पुनः। नाम शूद्रीं प्रयुञ्जीत···VIII. 6, 7.

[2] शूद्रविट्क्षत्रियाणान्तु ब्राह्मणे संस्थिते यदि। एकरात्रेण शुद्धिः स्यादित्याह कमलोद्भवः। VI. 39. एकाहात् क्षत्रिये शुद्धिः वैश्ये तु स्याद् द्व्यहे सति। शूद्रेषु च त्र्यहं प्रोक्तं प्राणायामशतं पुनः। VI. 44-5.

[3] ऊढायां हि सवर्णायामन्यां वा काममुद्वहेत्। तस्यामुत्पादितः पुत्रो न सवर्णात् प्रहीयते। उद्वहेत् क्षत्रियां विप्रो वैश्यां वा क्षत्रिया विशाम्। न तु शूद्रां द्विजः कश्चिन् नाधमो पूर्ववर्णजाम्। Also II. 12. नानावर्णासु भार्य्यासु सवर्णा सहचारिणी। धर्म्म्याधर्म्येषु धर्म्मिष्ठा ज्येष्ठा तस्य स्वजातिषु।

[4] ब्राह्मणो वृषलीं गत्वा त्र्यहं भवति सूतकी। अथास्यां गर्भमाधत्ते ब्राह्मण्यादेव हीयते।

[5] सवर्णालाभे क्षत्रियादिविवाहमाह—अलाभे कन्यकायाः स्नातकव्रतं चरेदपि वा क्षत्रियायां पुत्रानुत्पादयेत्, वैश्यायां शूद्रायां वेत्यन्ये।

[6] On Manu III. 140. भवन्ति च शूद्रस्य ब्राह्मणाः अर्थसम्बन्धिनः पारशवस्य मातयोऽपि। On III. 155. शूद्राविवाहश्च सर्व्वेषामनुज्ञातत्वात् न गर्हितः। स च कृतसजातीयापरिणयस्यानुज्ञातः। अतोऽसत्यां सजातीयायां वृषल्या भर्त्ता प्रतिषिध्यते।

[7] On Yāj. I. 56. काम्ये पुत्रोत्पादने ब्राह्मणस्य क्षत्रियावैश्ये क्षत्रियस्य च वैश्या अभ्यनुज्ञाता भवति। On 57. एष विधिः स्मृत इति तद्रतिकामस्य आश्रममात्राभिकाङ्क्षिणो वा नान्तरिकतया उत्पन्नस्य।

§ 8. 163-167), Vīramitrodaya (p. 101 § 2) and Mādhavīya (Section 24). But the treatment is perhaps for completeness' sake rather than as exposition of existing usage. Caṇḍeśvara the author of Smṛti-ratnākara in the Section on Householders upholds the ban on such unions.

The prevalence of marriages between members of different castes down to the end of the first millennium is proved by many historical instances. Mr. Vaidya in his Mediaeval Hindu India points out such matrimonial connections in various princely families. The custom had been observed by Megasthenes who recorded that Brahmins were allowed to marry wives from the lower castes. (McCrindle—Megasthenes and Arrian, p. 86). In the first four centuries such cases are furnished by history. Bāṇa the author of Harṣacarita (in Ucchvāsa I, p. 91), records that he had two *pāraśava* brothers—legitimate sons of a Brahmin by a Śūdra wife. Harṣavardhana himself (presumably a Vaiśya King from his title Vardhana) married his daughter to a Kṣatriya. In Kālidāsa's Mālavikāgnimitra the King's brother of an inferior caste is appointed Governor of the Narmada region.

The Mandasōr inscription (Corpus Inscriptionem, Vol. III, pp. 152-154) shows that Ravikīrti a Brahmin married Bhānuguptā a Vaiśya and had three sons by her, one of whom Abhayadatta was governor (Rājasthānīya) of the Narmada province under Yaśodharman. Dr. Fleet cites the Ghaṭotkacha cave inscription according to which Hastibhoja's ancestor, a Brahmin, married conformably to the precepts of revelation and tradition a Kṣatriya wife along with Brahmin wives, who bore him sons "given to the study of the Vedas." Chāchā, a Brahmin, who supplanted Agham Lohana of Brahmanabad, himself married the widow of Lohana although he degraded the Lohanas for their custom of widow-remarriage to the rank of Vaiśyas. He also married the widow of Sāhasi, a Śūdra King of Sind

of Buddhistic faith, for political reasons (according to the Chāchānāmā). Sometimes these marriages extended beyond the caste system as in the plastic period of Hindu social development.

Thus although the Śakas of Ujjain were a foreign people, Rudradāman's daughter was married to a Sātavāhana King just as Chandragupta married a Yavana princess. The Pallavas of Kāñchī, though orthodox Kṣatriyas, who boasted of their adherence to their duties as prescribed by the *Śāstras*,[1] contracted marriages with Śūdra women. In the minor Himalayan states of the period marriages between Kunet wives and Brahmins and Kṣatriyas were common. In the Aphsad grant of Ādityasena (Corp. Ins., Vol. III, No. 42, p. 200) occur verses,[2] which would point to a case of Pratiloma marriage which the Smṛtis are so careful to interdict.[3]

A Pratihāra inscription records that a Brāhmaṇa married a Brāhmaṇa as well as a Kṣatriya woman and the issue respectively became Paṇḍihāra Brahmanas and Paṇḍihāra Kṣatriyas. In trying to account for the dictum that in the Kali age there are only two castes—the first and the last—Mr. Vaidya opines that in the Northern, Southern and Eastern parts of India Kṣatriyas contracted intercaste marriages, and came in consequence to be degraded. But it was not so in the middle country where pure Kṣatriya families continued, which kept aloof from the mixed Kṣatriyas, but as the commentators and digest-writers belonged to Southern India they imposed their own views on the rest of India, thus leading to the doctrine of the extinction of the Kṣatriyas and Vaiśyas in the Kali age.[4]

1 अग्र्यग्रयमसोमयागमयथाप्रस्थानदण्डोद्यमं···जातं यत्र नरेश्वरं न प्रणमो युद्धेषु वा विक्लवम्।

2 गुणवद्द्विजकन्यानां नानालङ्कारयौवनवतीनां परिणायितवान् स नृपः शतं निसृष्टाग्रहाराणाम्।

3 But परिणायितवान्, as according to ordinary grammar, means 'gave away in marriage.'

4 The existence of all the four castes despite such texts as कलावाद्यन्तयोः स्थितिः has been judicially upheld—*vide* VII Moore's Indian Appeals, p. 18.

Levirate or Niyoga

From the provisions regarding Levirate found in almost all the treatises on Dharma the prevalence of this custom in Hindu society may be legitimately inferred. It was connected with the primitive joint family system under which, along with the chattels of the deceased, the sonless widow also passed to the survivors. In a poor family a natural way of providing for her is to marry her to her brother-in-law but rich widows could not be treated like paupers and a temporary intercourse with a view to begetting of a son was provided, upon which she gained control over the estate which she retained till the son was of age. (*Cf. Manu* IX. 146).[1] But from the very earliest times the attitude of writers on the sacred law has been divergent and since the age of the Sūtras the practice has been a matter of dispute, the results of which can be traced in the later works on Adoption. *Āpastamba* II. xxvii. 2-7 lays down that for the purpose of *niyoga* the wife is not to be made over to non-gentiles and says that the bride is given to the family.[2] And even appointment to a gentile is forbidden, according to him, in the present age owing to the weakness of men's senses. The hand of a gentile is also considered as that of a stranger. Transgression of this principle leads to hell for both husband and wife. Reward in the next world due to obedience to the sacred law is preferable to offspring obtained by *niyoga*. Again in II. xiii. 3-9 he says that approaching a woman already married to another

[1] धनं यो बिभृयाद् भ्रातुर्मृतस्य स्त्रियमेव च । सोऽपत्यं भ्रातुरुत्पाद्य दद्यात्तस्यैव तद्धनम् ।

[2] Many European scholars have tried to see in it polyandry and the communal marriage of primitive society but *niyoga* has prevailed amongst many races that did not know polyandry. Besides it need not have been due to polyandry which is referred to with repugnance by Āpas. II. 27. 2-4 and by Bṛhaspati in the list of forbidden practices. II. 30, 31.

or not duly married to oneself or belonging to another caste is reprehensible.[1] The son also becomes sinful. And there is besides a Brāhmaṇa text to the effect that the son belongs to the begetter. And a Vedic *gāthā* is also cited stating that the son belongs to the begetter in the next world and a husband knowing that makes the begetting of children by another useless for himself. Transgression of the law and violence were found amongst the ancient sages. They committed no sin owing to the greatness of their lustre. A man of later times, who seeing their deeds, follows them falls.

According to the commentator Haradatta the Vedic *gāthā* does not refer to or prevent the appointment of a eunuch's wife or of a childless widow to a relation. And he cites the example of Satyavatī, the soil of Vicitravīrya, appointed to Vyāsa. In such a case the offspring belongs to both the begetter and the husband. And this rule he deduces from *Āpas. Śr. S.* I. ix. 7.[2] But Haradatta's views, as pointed out in S. B. E., cannot be reconciled with the Sūtras cited above which plainly forbid *niyoga*. The practice of *niyoga* was hedged in by restrictions from the outset. *Gautama* (XVIII. 4, 6, 12, 15 also XXVIII. 22-23), however, knows no ban.[3] And since he is generally regarded as posterior to Āpastamba, his attitude would show that, whatever the stricter view, the practice continued. According to him the offspring is to be obtained from the husband's younger brother or those connected through

[1] *Cf.* ज्येष्ठो यवीयसो भार्यां यवीयान् वाग्रजस्त्रियम् । पतितौ भवतो गत्वा नियुक्तावप्यनापदि —Manu, IX. 58.

[2] यदि द्विपिता स्यादेकैकस्मिन् पिण्डे द्वौ द्वावुपलक्षयेत् —Āp. Śr. S.

[3] Gaut. XXVIII. 18-19 is construed by some to mean that a widow was only entitled to succeed if she raised up issue for her husband and hence her right is not personal but as guardian for her son.—Mit. II. i. 88.

piṇḍa, *gotra* or *ṛṣi* or from one of the same caste. He refers to the opinion of some that from other than the husband's younger brother offspring is not to be desired. In regard to the number of children to be thus obtained he allows considerable latitude. If more than two are begotten the excess belongs to the begetter except in case of an agreement to the contrary between the parties. If the husband be alive, however, whatever be the number, and even without such an agreement, he is entitled to all the issue. And this is so, even though the begetter be other than the husband's brother. Gautama further lays down that when the husband is lost, the wife is to wait for six years and then to have recourse to appointment.

Baudhāyana (II. 2. 66-70) enjoins the practice of *brahmacarya*—a chaste and continent life for a year or, in case of inability to wait, for six months and thereafter permits appointment to the husband's younger brother only if the wife be desirous of issue and not incapable of child-bearing through age or disease.[1] Elsewhere he cites the view of Aupajaṅghani, a former *ācārya*, according to whom, of the twelve descriptions of sons, the *aurasa* or the son begotten by oneself on the legitimate wife is alone to be regarded as *putra*.[2] The Vedic *gāthā* cited by Āpastamba is ascribed by him to the sage Aupajaṅghani who was asked by Yama whether the son belonged to the begetter or the owner of the soil and in reply repeated the saying of the wise that the former was the case and later on before Janaka related the whole episode and added that

[1] संवत्सरं प्रेतपत्नी मधुमांसलवणानि वर्जयेत् (तत्र यावज्जीविकम्—गोविन्दस्वामी)। षण्मासानिति मौद्गल्यः। [अशक्तावनुग्रहोऽयम्, अन्यथा पितृमेधकल्पोक्तो "यावज्जीवं प्रेतपत्नी" इत्यनेन विरोधः स्यात्।] अत ऊर्ध्वं गुरुभिरनुमता देवराज्जनयेत् पुत्रमपुत्रा [पुत्रमेकं जनयेत् ... विवक्षितत्वात् एकवचनस्य] [क्व देवरनियोगो न स्यादित्याह] अथाप्युदाहरन्ति। वशा चोत्पन्नपुत्रा च नीरजस्का गतप्रजा। नाकामा सन्नियोज्या स्यात् फलं यस्यां न विद्यते॥

[2] तेषां प्रथममित्याह औपजङ्घनिः।—II. ii. 38.

he had since then grown jealous. The *Arthaśāstra* clearly sanctions *niyoga* (Chap. LXI, p. 159).[1] *Manu's* views are divided on this question. In IX. 60-70 he first lays down the directions as to the observance of the practice and then condemns it as one not sanctioned by the Veda. The offspring is to be sought either from the husband's younger brother or from a *sapiṇḍa* by a woman appointed properly by the guardians on her husband's side in case of extinction of the line.[2] The intercourse is to be such as not to lead to affectionate relationship between the parties and the sons are to be limited in number to two at the utmost. For those versed in the law of *niyoga*, finding the purpose of levirate unfulfilled by the begetting of one son, approve of the raising of a second[3] son on women as in accord with Dharma. After laying down these specific directions, he says that there is no Vedic *mantra* countenancing it.[4] Medhātithi is puzzled over this dictum and he cites a Vedic verse.[5] The prohibition of *niyoga* which follows immediately had, according to Dr. Jolly (pp. 121, 155), been tacked on to the detailed rules at a time when the practice had fallen into disuse. There is an analogy in śloka lxxvi to Gautama's rule as

1 सवर्णतश्च प्रजाता नापवादं लभेत ... अन्यतः परं यथेष्टं विन्देत ।

2 नान्यस्मिन् विधवा नारी नियोक्तव्या द्विजातिभिः ।
अन्यस्मिन् हि नियुञ्जाना धर्मं हन्युः सनातनम् ॥—IX. 64.
या नियुक्तान्यतः पुत्रं देवराद्वाप्यवाप्नुयात् ।
तं कामजमरिक्थीयं वृथोत्पन्नं प्रचक्षते ।—IX. 147.
भ्रातुर्मृतस्य भार्यायां योऽनुरज्येत कामतः ।
धर्मेणापि नियुक्तायां स ज्ञेयो दिधिषूपतिः ॥—III. 173.

3 द्वितीयमेके प्रजनं मन्यन्ते स्त्रीषु तद्विदः ।
अनिर्वृत्तं नियोगार्थं पश्यन्तो धर्मतस्तयोः ॥—IX. 61.

4 नोद्वाहिकेषु मन्त्रेषु नियोगः कीर्त्यते क्वचित् ।—IX. 65.
Also अयं द्विजैर्हि विद्वद्भिः पशुधर्मो विगर्हितः ।—IX. 66.

5 ननु च लिङ्गानि नैव सन्ति इत्युक्तम्, नैवम्. औद्वाहिकेषु मन्त्रेषु न सन्तीत्युक्तम् । अन्यत्र तु दृश्यते को वां शयुत्रा विधवेव देवरम् मर्यं न योषा कृणुते सधस्थ आ—Ṛgveda X. 40. 2.

to the period of waiting in the case of the unprovided wife separated from her husband. Nandana supplies the omission by allowing remarriage, which however is disapproved by Medhātithi. The position of Manu in regard to Levirate is divided between approval and disapproval. He cannot ignore a practice deep-rooted in society, and hence has to make provisions for the issue of this kind of union in the law of inheritance (IX. 120, 146, 164).[1] At the same time his Puritanic bent would fain stop the practice.[2] This is a tendency that runs right across Manu's whole treatise. Medhātithi frankly confesses the difficulty of reconciling the dicta of Manu on this subject.[3] Jayaswal explains Manu's position as the necessary consequence of his resolve to fight the law of marital dissolution found in Kauṭilya and hence he is led to the denial of the old practice altogether.

Directions as to *niyoga* contained in the older law-books are repeated in *Vasiṣṭha*, XVII. 14, 55, 56. He discusses who is competent after the husband to make the appointment or *niyoga* and in sec. 56, ordains that the father or brother of the sonless widow shall assemble the *Gurus* who taught or sacrificed (for her deceased husband) as well as his relatives and these shall appoint her. This procedure, it would seem, took about six months. *Yājñavalkya* (I. 68-69) re-affirms the

[1] यवीयान् ज्येष्ठभार्यायां योऽनुरज्येत कामतः ।
समस्तत्र विभागः स्यादिति धर्मो व्यवस्थितः ।—120.
धनं यो बिभृयाद् भ्रातुर्मृतस्य स्त्रियमेव च ।
सोऽपत्यं भ्रातुरुत्पाद्य दद्यात्तस्यैव तद्धनम् ॥—146.
षष्ठं तु क्षेत्रजस्यांशं प्रदद्यात् पैतृकाद् धनात् ।
औरसो विभजन् दायं पित्र्यं पञ्चममेव वा ॥—164.

[2] The whole purpose of Niyoga is repudiated in—
य एतेऽभिहिताः पुत्राः प्रसङ्गादन्यबीजजाः ।
यस्य ते बीजतो जातास्तस्य ते नेतरस्य तु ॥—IX. 181.

[3] अनयोस्तु स्मृत्योः कतमा स्मृतिर्ज्यायसीति न शक्यं कर्तुमतिशयावधारणम् [illegible] व्यवस्था; संयमः उभयोरपि वस्तु निर्व्वहति on V. 163.

ancient law as to levirate.[1] He does not, like Manu, restrict the choice of the appointed to the husband's younger brother but agrees with Gautama. In its original form *niyoga* was perhaps restricted to sonless widows (as suggested by Ṛg-Veda X. 40 and Vaśiṣṭha). Manu speaks of the appointment of the wife in IX. 161 but in his detailed directions he has in mind the widow only. Gautama refers to the appointment of a wife but only as an appendix to the rules concerning the widow's appointment. Manu and Baudhāyana in defining the Kṣetraja son speak of the *niyoga* of a wife.

Niyoga was permitted by Śāṅkha-Likhita Dharma-sūtra (Kane, p. 78).[2] *Nārada* in XII. 80, 86, 88 sets forth the law on this subject. He traces the need of authorisation by the relations of the widow failing which the issue is declared illegitimate and incapable of inheriting by the expounders of the Veda. He contemplates cases of appointment both to the elder and the younger brother.

Bṛhaspati is perhaps the first among the law-givers expressly to bring in the Kali age as the time of prohibition of the practice and by this means attempts to reconcile the apparent contradiction in Manu.[3]

Brahma-Purāṇa also pronounces the Kali ban in a passage quoted by Hemādri which, from the context, one would take as coming from the Āditya-purāṇa. *Baudhāyana* (a metri-

[1] अपुत्रां गुर्व्वनुज्ञातो देवरः पुत्रकाम्यया । सपिण्डो वा सगोत्रो वा घृताभ्यक्त ऋतावियात् ॥
आगर्भसम्भवाद् गच्छेत् पतितस्त्वन्यथा भवेत् । अनेन विधिना जातः क्षेत्रजोऽस्य भवेत् सुतः ॥

[2] अनौरसेषु पुत्रेषु भार्य्यास्वन्यगतासु च । परपूर्व्वासु च स्त्रीषु वाग्दाक्शुद्धिरिहेष्यते ।

—Śaṅkha, XV. 13.

उक्तो नियोगो मनुना निषिद्धः स्वयमेव तु । युगक्रमादशक्योऽयं कर्त्तुं सर्व्वैर्विधानतः ॥
तपोज्ञानसमायुक्ताः कृते त्रेतायुगे नराः । द्वापरे तु कलौ नॄणां शक्तिहानिर्विनिर्म्मिता ॥
अनेकधा कृताः पुत्रा ऋषिभिर्यैः पुरातनैः । न शक्यास्तेऽधुना कर्त्तुं शक्तिहीनतया नरैः ॥

—XXV. 12-14.

[3] ऊढायाः पुनरुद्वाहं ज्येष्ठांशं गोवधं तथा । कलौ पञ्च न कुर्व्वीत भ्रातृजायां कमण्डलुम् ॥

cal smṛti ?) cited in the Smṛti-candrikā has a prohibitive text.[1] *Kātyāyana* prescribes a penance after *niyoga* and condemns connections for pleasure and not for the purpose of procuring issue for the husband.[2]

Bhaṭṭa Kumārila is clearly of opinion that *niyoga* was a breach of the sacred law. He does not acknowledge its validity in former ages or its invalidity only in later ages. In reality a violation, it is justified only in the case of the spiritually strong and is dangerous for the weak.[3] Asahāya's commentary on Nārada-Smṛti which is not later than 750 A.D. since it speaks of Pāṭaliputra (ruined in 700) as still flourishing, says that *niyoga* and widow-marriage though permitted by the Dharma-Śāstra are given up in actual practice.[4]

Viśvarūpa on *Yājñavalkya* while nowhere quoting the Kalivarjya texts refutes the Smṛtisaṅgraha[5] and the opinion of Dhāreśvara which agrees with it. He allows *niyoga* to Śūdras and to Kṣatriya kings whose line is in danger of extinction while Mitākṣarā forbids it altogether.

Medhātithi's position partially indicated above is rather ambiguous. He also does not accept the fiction of Kalivarjya. Thus on Manu 1.26 he comments[6] that intercourse with the husband's younger brother is for women a

[1] विधिर्योऽनुष्ठितः पूर्वं क्रियते नेह साम्प्रतम्। पुराकल्पःसमुद्दश्च विधवाया नियोजनम्।

[2] नियोगात् पावनं कुर्य्यात् ययोक्तं तदभिशुद्धये। द्विजस्य स्त्रीषु धर्म्मोऽयं शूद्रस्यैके तदाश्रयः।
सुखार्थं या प्रवृत्ता स्त्री न भर्तुः सुतकाम्यया। पुत्रन्तु जनयेदेव निन्द्या पापा च सा स्मृता।

—Banerji, Śls. 681-82.

[3] Tantravārttika, I. iii. 3.—द्वैपायनस्यापि गुरुनियोगाद्···भ्रातृजायापुत्रजननं प्राक्कृतपश्चात्करिष्यमाणतपोबलेन नातिदुष्करम्। अन्योऽपि यस्तादृक्तपोबलो निर्व्वहेत् स कुर्य्यादेव।

[4] तथाच धर्म्मशास्त्रोक्तम् "अपुत्रां गुर्व्वनुज्ञातो ..." तथाच "नष्टे मृते प्रव्रजिते —" इत्यादिकम् धर्म्मशास्त्रोक्तमपि लोकाचारे व्यवहारे च परित्यक्तम्।

[5] भ्रातृषु प्रविभक्तेषु संसृष्टेष्वप्यसत्सु च। गुर्व्वादेशान्नियोगस्था पत्नी धनमवाप्नुयात्।

[6] एवं देवरगमनं स्त्रीणामधर्म्मो गुरुनियुक्तानां पुत्रार्थिनीनां घृताक्ताद्यनुपालेण धर्म्मः।

violation of the sacred law but sanctioned under certain restrictions only.

In illustrating Manu IV. 176 he says[1]: This is a fitter illustration. The duty of *niyoga* though prescribed by Smṛti is not practised being deprecated by society. This sentence bears witness to the growing volume of public opinion against the old practice.

Vijñāneśvara, as already pointed out, is definitely opposed to it and, as his commentary is far from a speculative work, it may be taken to indicate the actual law of the times[2]. Commenting on II. 118 he cites from the Nighaṇṭukārikā two verses declaring that *niyoga* is not for this age and remarks that it is resented by public opinion.[3] In his commentary on II. 128 he gives a detailed resumè of Manu's position regarding this usage and concludes that, the appointment of a married wife being altogether forbidden by the sage and not merely made optional, the appointment of the betrothed only is sanctioned by II. 129.[4]

Pārijāta, a work different from the well-known Madanapārijāta (*contra* I. L. R. 12 Calcutta 348—Kāne, p. 309) and quoted by Kalpataru and Mitākṣarā, prescribes *niyoga* and assigns the putative father's estate to the son born thereof. This is also the view of Dhāreśvara and Halāyudha (cited in Smṛti-sāra—Kane, p. 296) according to whom the sonless widow not submitting to *niyoga* should be deprived of the estate.

That the prohibition of *niyoga*, however, came to be the law of the land about this time is proved by evidence gathered from different sources. Thus a Saṅgraha or work

1 इदन्तु युक्ततरमुदाहरणम नियोगधर्म्मः स्मृत्या विहितोऽपि लोकसंक्रुष्टत्वान्न क्रियते ।

2 On I. 68-9.—एतश्च वाग्दत्ताविषयमित्याचार्य्याः—यस्या म्रियेत कन्याया ... इति मनुस्मरणात् ।

3 यथा नियोगधर्म्मो नो नानुबन्ध्यावधोऽपि वा । तथोद्धारविभागोऽपि नैव सम्प्रति वर्त्तते ॥

4 नियोक्तॄणां निन्दाश्रवणात् स्त्रीधर्म्मेषु व्यभिचारस्य बहुदोषश्रवणान संयमस्य प्राशस्त्याच्च ।

of compilation (Nighaṇṭukārikā ?) cited by Smṛticandrikā gives these verses.[1] Smṛti-Muktāphala, a widely used Deccanese digest by Vaidyanātha Dīkṣita (quoting from Haradatta but not referring to Nirṇayasindhu and hence dated 1600 A.D. according to Kane) holds that *niyoga* is altogether prohibited at present.[2]

It may be pointed out that a son born of *niyoga* came to be realised as of little spiritual service to the reputed father. As a rule *niyoga* cut off the natural relation between the begetter and his son but some writers (Baudhāyana II. 2. 40-41, Uśanas, as quoted by Śaṅkha-Likhita and Kātyayana) hold that the Kṣetraja son presents funeral oblations both to his natural father and to his mother's husband. Yājñavalkya II. 128 recognises the continuance of such a son in his natural family only when the begetter had no other son. Manu allows it as a result of a special contract between the two fathers (IX. 53) and Hārīta, where he had been begotten on a widow. Nārada (XIII. 23) says that the *Bījin* or *Dvyāmuṣyāyaṇa* succeeds to half the property of each of his two fathers.

Widow-remarriage

Of the different usages banned in the Kali age the remarriage of widows has been a subject of the keenest controversy. At present the controversy is more or less academic in interest after the validation of the remarriage of Hindu widows by Act XV of 1856. The controversy has not, however, ceased since the opponents of the usage are still concerned to show that it is nowhere sanctioned by the sacred law and to prove that all the relevent texts bear out the proposition that only the remarriage of a betrothed girl is permitted. The advocates of the revival

[1] *Vide* note (3) on previous page.

[2] इति त्वद्यत्वे विप्रतिपन्नं विप्रतिषिद्धम् ।

of the usage, on the other side, not satisfied with the progress of the measure still resort to Śāstraic disputation as the means of popularising it. A volume of literature has of late gathered round the subject. The present treatment, however, is purely historical, and seeks to show the origin and evolution of the prohibition.

For Vedic support five texts are cited.—[1] ṚgVeda X. xl. 2: Oh Aświns, where do you two stay during the night and day? What worshipper comes up before you in order to make offerings to you on the altar just as on the bed the widow turns towards herself her *devara* (her husband's brother or her second husband) and the wives of all men, their husbands?

The meaning of *devara* is disputed. According as the first or the second meaning is admitted, the passage would bear upon levirate or remarriage. Sāyaṇa's comment favours the first meaning as also Swāmī Dayānanda's in recent times.

Ṛg Veda X. xviii. 8: Oh Woman, you are lying beside this deceased husband; give him up and come unto the world of the living, agree to accept the wifehood of this *Didhiṣu* (one who wants to marry you) who holds you by the hand. This rendering is according to Sāyaṇa's commentary on the Yajurveda text.[2] The second line is, however, otherwise paraphrased by Sāyaṇa in Ṛg Veda[3] which

[1] कुहस्विद् दोषा कुहवस्तोरश्विना कुहाभिपित्वं करतः कुहोषतुः ।
को वां शयुत्रा विधवेव देवरं मर्यं न योषा कृणुते सधस्थ आ ॥

Cf. नारी तु पत्यभावे वै देवरं कुरुते पतिम्—Mahābhārata Anuśāsana Parva, Ch. VIII, Śl. 22.

[2] उदीर्ष्व नार्यभि जीवलोकं गतासुमेतमुपशेष एहि ।
हस्तग्राभस्य दिधिषोस्तवेदं <u>पत्युर्जनित्वमभिसम्बभूथ</u> ॥

Variant to underlined portion—त्वमेतत् पत्युर्जनित्वमभिसंबभूव ।

[3] हस्तग्राभस्य पाणिग्राहस्य दिधिषोः (पुनर्विवाहेच्छोः) एतत् जनित्वं जायात्वं अभिसम्बभूथ आभिमुख्येन प्राप्नुहि इत्यर्थः ।

would give another version : Come, since you have resolved to follow in view of your wifehood to this husband who accepted your hand and gave you children.[1] The word *Didhiṣu* is here taken to mean "one who got you with child."

Ṛg Veda[2] X. xviii. 7 : May these women who are not widows, who have good husbands and who are mothers enter with unguents and clarified butter ; without fear and without sorrow let them first go up into the dwelling (Wilson).

Colebrooke accepting the reading (given in Raghunandana's Śuddhi-Tattva, Chap. I) rendered it thus : Let these women not be widowed, good wives, adorned with collyrium, holding clarified butter, consign themselves to fire. Immortal, not childless, not husbandless, excellent, let them pass into fire whose original element is water.

The two readings have been used respectively in support of widow-remarriage and Satī.

Ath. Veda[3] XVIII. iii. 1 : Tait. Ār. VI. i. 3 : Oh mortal, this woman desiring the world of her husband and performing the time-honoured duty of a wife comes near you, who are dead ; give her (leave to live in this world and to have) issue and wealth.

Ath. Veda[4] IX. v. 27-29 : She who, having married one, marries another offering the *Pañcaudana* and *Aja*, they

[1] एहि आगच्छ यस्मात् त्वं हस्तग्राभस्य पाणिग्राहं कुर्व्वतः दिधिषोः गर्भस्य निधातुः तवास्य पत्युः संबन्धादागतम् इदं जनित्वं जायात्वमभिलक्ष्य संबभूथ सम्भूतासि अनुसरणनिश्चयमकार्षीः तस्मादागच्छ ॥

[2] इमा नारीरविधवाः सुपत्नी राञ्जनेन सर्पिषा संविशन्तु ।
अनश्रवोऽनमीवाः सुरत्ना आरोहन्तु जनयो योनिमग्रे ॥

Variants to portions underlined—सपत्नी ... अनश्वरो ... जलयोनिमग्ने ।

[3] इयं नारी पतिलोकं वृणाना नि पद्यत उप त्वा मर्त्य प्रेतम् ।
धर्मं पुराणमनुपालयन्ती तस्यै प्रजां द्रविणं च धेहि ॥

[4] या पूर्व्वं पतिं वित्वाथान्यं विन्दतेऽपरम् । पञ्चौदनं च तावजं ददातो न वि योषतः । समानलोको भवति पुनर्भुवापरः पतिः । योऽजं पञ्चौदनं दक्षिणाज्योतिषं ददाति । अनुपूर्व्ववत्सां धेनुमनड्वाहमुपबर्हणम् । वासो हिरण्यं दत्वा ते यन्ति दिवमुत्तमाम् ॥

(she and her second husband) do not separate. The second husband dwells with the rewedded wife if he offers the *Aja* and *Pañcaudana*.

These texts leaving out the disputed ones show that remarriage was not unknown to the Vedic social system. The word Gartāruḥ (Ṛg-Veda I. cxxiv. 7) as explained by Yāska in his Nirukta III. 5 may be noted. Also Ṛg-Veda VI. xlix. 8 furnishes evidence of remarriage in case the husband disappeared or was not heard of. (*Cf.* Mahābhārata III. lxx. 26).[1] The word Vidhavā though rather uncommon also occurs in a few places in Vedic literature.[2] Coming down to the writers on the sacred law both in aphorisms and verses, we notice sharp differences of opinion. *Gautama* in xviii. 15-17 prescribes terms of waiting for the wife of a husband gone abroad[3].

Baudhāyana Dh. S. IV. i. 17-18 describes some of the seven kinds of *punarbhūs* but disapproves of them. At the same time in the case of a girl violated by force but not married, he recommends bestowal of her hand on another and in the case of a virgin married but not deflowered, he recommends remarriage in the *Punarbhū* process.[4]

[1] सूर्य्योदये द्वितीयं सा भर्त्तारं वरयिष्यति। न हि स ज्ञायते वीरो नलो जीवति वा न वा॥
—Mahā., Vana, Ch. LXX, Śl. 26.

[2] Ṛg-Veda IV. 18. 12; X. 40. 2; Śat. Br. III. 7; Nirukta III. 5.

[3] नष्टे भर्त्तरि षाड्वार्षिकं क्षपणं श्रूयमाणेऽभिगमनम्। प्रव्रजिते तु निवृत्तिः प्रसवात् द्वादश वर्षाणि ब्राह्मणस्य विद्यासम्बन्धे।

[4] बलाच्चेत् प्रहृता कन्या मन्त्रैर्यदि न संस्कृता। अन्यस्मै विधिवद्देया यथा कन्या तथैव सा। निसृष्टायां हुते वापि यस्यै भर्त्ता म्रियेत सः। सा चेदक्षतयोनिः स्यादगतप्रत्यागता सती। पौनर्भवेण विधिना पुनःसंस्कारमर्हति।—IV. i. 16-18.

The seven kinds are : वाग्दत्ता, मनोदत्ता, अग्निं परिगता, सप्तमं पदं नीता, भुक्ता, गृहीतगर्भा, प्रसूता चेति सप्तविधा पुनर्भूः। तां गृहीत्वा वृथाकारी स्यात् न प्रजां न धर्मं वा विन्देत।
—Baudhāyana cited in Vīr.-mit., pp. 735-6.

Vaśiṣṭha has similar provisions (XVII. 75-80).[1] He allows marriage of the betrothed girl and also of the married where there has been no consummation. For the wives of husbands gone abroad, he recommends seeking the company of relations after waiting for some time. He defines *punarbhūs* as women who give up an impotent, fallen or insane husband and take to another, but such unions, according to him, are sinful.[2] Raghunandana in his Udvāhatattva quotes a text purporting to be Vaśiṣṭha's which allows a gift afresh of a girl married to a defective or *sagotra* husband.[3] In other words in certain cases of marital ineligibility the marriage is void.

Unqualified condemnation of the usage is met with in *Manu* who in certain verses altogether repudiates widow-remarriage. The extant recension of his code is, as is well known, far from complete and consistent. It is marked by some obvious lacunae. He provides for the bestowal of the betrothed, at the same time he regards such practice as unworthy of the righteous[4]. The only exception is in the case of the bride for whom a price has been paid. If willing, she may be given to the betrothed husband's brother[5]. The ideal of gift of a girl in marriage once for

[1] अद्भिर्वाचा च दत्तायां म्रियेताथ वरो यदि। न च मन्त्रोपनीता स्यात् कुमारी पितुरेव सा। यावच्चेदाहृता कन्या मन्त्रैर्यदि न संस्कृता। अन्यस्मै विधिवद् देया यथा कन्या तथैव सा॥ पाणिग्राहे मृते बाला केवलं मन्त्रसंस्कृता। या च त्वक्षतयोनिः स्यात् पुनःसंस्कारमर्हति॥ Readings: बलाच्चेत् ...... प्रहृता ... सा चेद ... ।

[2] प्रायश्चित्तं वाप्युपनियुञ्ज्यादित्येके—Ch. XVII.

[3] कुलशीलविहीनस्य षण्ढस्य पतितस्य च अपस्मारिविधर्मस्य रोगिणां वेशधारिणाम्। दत्तामपि हरेत् कन्यां सगोत्रोढां तथैव च.—p. 128.

[4] न दत्त्वा कस्यचित् कन्यां पुनर्दद्याद् विचक्षणः। दत्त्वा पुनः प्रयच्छन् हि प्राप्नोति पुरुषानृतम्। IX. 71. एतत्तु न परे चक्रुर्नापरे चापि साधवः। यदन्यस्याभ्यनुज्ञाय पुनरन्यस्य दीयते॥ —IX. 99.

[5] कन्यायां दत्तशुल्कायां म्रियेत यदि शुल्कदः। देवराय प्रदातव्या यदि कन्यानुमन्यते। IX. 97.

all is stressed by him in many places[1]. For widows he prescribes a life of chastity and declares that spiritual welfare hereafter is not imperilled by failure to have sons.[2] There cannot be progeny begotten by another or upon another's wife, nor is a second husband anywhere prescribed for a chaste wife, he declares[3]. This rule, however, is opposed to both *niyoga* and remarriage in widowhood. But provisions for *niyoga* are made by the sage elsewhere. Two other cases also arise—long absence of the husband from home and his death. Compared with Vaśiṣṭha's rules in this behalf, Manu IX. śls. 75-78 appear a little disjointed. After prescribing the duty of a wife left provided by the husband, he considers the case of a wife left without any provision and says: (Living by blameless work) she must wait for 8, 6 and 3 years respectively according as the husband is gone abroad on religious duty, for study or for pleasure.[4] But Manu is silent as to what is to be done after this period and the commentators disagree. According to Nandana remarriage is allowed but according to Medhātithi it is disallowed. Kullūka says that thereafter she should go out in search of the husband. Bühler's note on IX. 76 may be noted in the connection. Kullūka quotes Vaśiṣṭha in support of his view.[5]

Manu is emphatic in denying remarriage of widows.[6] But IX. 175-176 repeat the views of Baudhāyana and

[1] सकृदंशो निपतति सकृत् कन्या प्रदीयते। सकृदाह ददानीति त्रीण्येतानि सकृत् सकृत्। IX. 47.

[2] V. 157-162.

[3] नान्योत्पन्ना प्रजास्तीह न चाप्यन्यपरिग्रहे। न द्वितीयश्च साध्वीनां क्वचिद्भर्त्तोपदिश्यते।— V. 162.

[4] प्रोषिते धर्मकार्य्यार्थं प्रतीक्ष्योऽष्टौ नरः समाः। विद्यार्थं षड् यशोऽर्थं वा कामार्थं त्रींस्तु वत्सरान्।

[5] प्रोषितपत्नी पञ्च वर्षाणि उपासीत ऊर्ध्वं पतिसकाशं गच्छेत्।

[6] पाणिग्रहणिका मन्त्रा नियतं दारलक्षणाः। तेषां निष्ठा तु विज्ञेया विद्वद्भिः सप्तमे पदे '... न विवाहविधावुक्तं विधवावेदनं क्वचित्। ... पाणिग्रहणिका मन्त्राः कन्यास्वेव प्रतिष्ठिताः। नाकन्यासु क्वचिन्नृणां लुप्तधर्मक्रिया हि ताः .—VIII. 226.

Vaśiṣṭha.[1] These verses speak of both the sacrament and procreation and hence they are in harmony, according to the opponents of widow-remarriage, with the provisions for the husband's younger brother marrying the betrothed bride of his deceased elder brother.[2] But it is to be noted that if betrothal is the promise to give a girl in marriage (*abhyanujñā*), in that case also remarriage is condemned by the law-giver in a passage already quoted (IX. 47).

An express text distinguishing marriage (*pāṇigrahaṇa*) from betrothal is ascribed to *Nārada* in the Smṛti-candrikā.[3] These discrepancies are perhaps due to the incompleteness of the extant recension of Manu by Sumati Bhārgava which contains much less than its full content of four thousand *ślokas*.

It may be pointed out that both Devaṇṇa Bhaṭṭa (Sm. C., p. 221) and Mādhavācārya ascribed to Manu a *śloka* just like *Parāśara*'s on remarriage in case of five kinds of mishaps. Only instead of '*patau*' the word in it is '*tathā*.'[4]

The Mahābhārata furnishes cases of widow-remarriage—for instance Arjuna's marrying Ulupī, the widowed daughter of Irāvān (son of Airāvata) and having issue by her. Bhīṣma-parva, Ch. 90. Śls, 7-8; Ādi-parva, Ch. 120, śls. 35-36 may be noted[5] in this connection.

The strictness of Manu's law of marriage contrasts with the provisions in the *Arthaśāstra*, Ch. III, which state the periods of waiting and permit remarriage with the husband's younger brother or an agnate if the husband is

[1] या पत्या वा परित्यक्ता विधवा वा स्वयेच्छया। उत्पादयेत् पुनर्भूत्वा स पौनर्भव उच्यते।
सा चेदक्षतयोनिः स्याद् गतप्रत्यागतापि वा। पौनर्भवेण भर्त्रा सा पुनःसंस्कारमर्हति ॥

[2] यस्या म्रियेत कन्याया वाचा सत्ये कृते पतिः। तामनेन विधानेन निजो विन्देत देवरः॥ IX.69.

[3] वरणाद् ग्रहणं पाणेः संस्कारो हि विलक्षणः। तयोरनियतं प्रोक्तं वरणं दोषदर्शनात्।

[4] नष्टे मृते प्रव्रजिते क्लीबे च पतिते पतौ। पञ्चस्वापत्सु नारीणां पतिरन्यो विधीयते।

[5] पूर्वं पूर्वतमाभावं मत्वा लिप्सेत वै सुतम्। उत्तमाद् वरात् पुंसः काङ्क्षन्ते पुत्रमापदि।

away for a long time.[1] Kauṭilya also provides for the abandonment of the husband in certain special cases (III. 2).[2]

But the Dharma law has always strained after a purer domestic life. Whether Manu's extant code be an endeavour to reassert the Brāhmaṇic law exactly in the time of the Sunga dynasty (as held by Mr. Jayaswal, XV, C. W. Notes, p. ccc) or not, it is in its arrangement and doctrines much in advance of the earlier Dharmasūtras of Gautama, Baudhāyana and Āpastamba. *Yājñavalkya* also aims at the same ideal. A widow remarried whether deflowered or not is, according to him, a wanton woman or *svairiṇī* and her issue *paunarbhavas*. The woman who is faithful to her husband, alive or dead, he says, gains praise on earth and dwells with *Umā* hereafter.[3] He also enjoins that the husband of the *punarbhū* should repay the debts of her first consort (II. 51. Cf. Nārada I. 20-24, Viṣṇu VI. 30, Bṛhaspati II. 52).

Nārada who recast Manu's Smṛti and is exclusively concerned with *vyavahāra* reproduces the older secular law

[1] ह्रस्वप्रवासिनां शूद्रवैश्यक्षत्रियब्राह्मणानां भार्याः संवत्सरोत्तरं कालमाकाङ्क्षेरन्नप्रजाताः, संवत्सराधिकं प्रजाताः, प्रतिविहिता द्विगुणं कालम्। अप्रतिविहिताः सुखावस्था बिभृयुः, परं चत्वारि वर्षाण्यष्टौ वा ज्ञातयः। ततो यथादत्तमादाय प्रमुञ्चेयुः। ब्राह्मणमधीयानं दश वर्षाण्यप्रजाता, द्वादश प्रजाता। राजपुरुषमायुःक्षयादाकाङ्क्षेत। सवर्णतश्च प्रजाता नापवादं लभेत। कुटुम्बर्द्धिलोपे वा सुखावस्थैर्विमुक्ता यथेष्टं विन्देत जीवितार्थमापद्गता वा। धर्म्यविवाहात् कुमारी परिग्रहीतारमनाख्याय प्रोषितमश्रूयमाणं सप्त तीर्थान्याकाङ्क्षेत, संवत्सरं श्रूयमाणम्। * * * ततःपरं धर्मस्थैर्विसृष्टा यथेष्टं विन्देत। तीर्थोपरोधो हि धर्मवध इति कौटिल्यः। दीर्घप्रवासिनः प्रव्रजितस्य प्रेतस्य वा भार्या सप्त तीर्थान्याकाङ्क्षेत, संवत्सरं प्रजाता। ततः पतिसोदर्यं गच्छेत्। बहुषु प्रत्यासन्नं धार्मिकं भर्मसमर्थं कनिष्ठमभार्यं वा। तदभावेऽपि असोदर्यं सपिण्डं कुल्यं वा। आसन्नमेतेषाम्। एष एव क्रमः।

[2] नीचत्वं परदेशं वा प्रस्थितो राजकिल्बिषी। प्राणाभिहन्ता पतितस्त्याज्यः क्लीबोऽपि वा पतिः। III. ii.

[3] I. 67. अक्षता वा क्षता चैव पुनर्भूः संस्कृता पुनः। स्वैरिणी या पतिं हित्वा सवर्णं कामतः श्रयेत्। अक्षतायां क्षतायां वा जातः पौनर्भवः सुतः। 75. मृते जीवति वा पत्यौ या नान्यमुपगच्छति। सेह कीर्त्तिमवाप्नोति मोदते चोमया सह।

on the subject of marriage in Chapter XII. In verse 15, he says that after a year's wait, the wife of an impotent man of certain descriptions shall procure another husband (19). For one incapable of procreation is unworthy of having a wife (24). For a bridegroom going abroad after a marriage, the wife is to wait for three monthly courses and then remarry.[1] He also defines the seven kinds of *punarbhūs*. In śl. 107 he lays down the rule also found in Parāśara and Vaśiṣṭha as to remarriage.[2] This is found in a Jaina work of 1014 A.D. (Bhāṇḍārkār Report on 1884-87 [Bom. 1897], p. 16). The Smṛti-candrikā assigns to him a *śloka* permitting remarriage of an undeflowered wife.[3] In 98-100 he repeats the terms of waiting as prescribed by Manu and Kauṭilya, 8 and 4 years for a Brahmin wife with and without issue respectively, 6 and 3 for a Kṣatriya, and 4 and 2 for a Vaiśya. And in śl. 101 he concludes thus : The above series of rules were laid down by the Creator of the world for those cases where a man disappeared. No offence attaches to a woman if she lives with another man thereafter.

The main support of the case for widow-remarriage in the present age, however, is the text of *Parāśara* the acknowledged law-giver of Kali (corresponding to Nārada XII. 97 above). The Maskari-bhāṣya on Gautama quotes the same *śloka* as Bṛhaspati's. Bhaṭṭojī Dīkṣita in his commentary on Caturviṃśatimatam (Ben. Skt. Series) says on the strength of this text that widow-remarriage is not prohibited. The word *patau* in the sloka being grammatically incorrect,

1 प्रतिगृह्य च यः कन्यां वरो देशान्तरं व्रजेत्। त्रीन् ऋतून् समतिक्रम्य कन्यान्यं वरयेद् वरम्। Also Śātātapa (quoted by Mādhava) and Laghu Śātātapa—

समुद्गृह्य तु तां कन्यां सा चेदक्षतयोनिका। कुलशीलवते दद्यादिति शातातपोऽब्रवीत्॥

2 नष्टे मृते प्रव्रजिते क्लीबे च पतिते पतौ। पञ्चस्वापत्सु नारीणां पतिरन्यो विधीयते॥ Also in Agni-purāṇa. Also Brahmapurāṇa—यदि सा बालविधवा बलात्त्यक्ताथवा क्वचित्। तदा भूयस्तु संस्कार्य्या गृहीता येन केनचित्॥

3 उद्वाहितापि या कन्या न चेत् सम्प्राप्तमैथुना। पुनःसंस्कारमर्हेत यथा कन्या तथैव सा॥

orthodox Pandits read it as *apatau* that is, a husband not formally wedded but only betrothed, so that Parāśara may be at one with Manu. But the peculiar form is an instance of archaic usage found elsewhere in Parāśara (Ch. X, śl. 30)[1] and also in Nārada (XII. 97).

While allowing remarriage in these exceptional cases *Parāśara* also subscribes to the high ideal of widowhood found in Manu.[2] In view of the Kalivarjya texts Parāśara's permission of remarriage is referred by orthodox Pandits to the first part of the Kali age. (*Vide* note, p. 349, Bangabāsī Edn., of the XIX Smṛtis).

Kātyāyana, of the same age as Paraśara, states the old law of remarriage but in a tone of disapproval. (N. Banerjee —Kātyāyana-mata-saṅgraha, 681-689). By remarriage he intends that of the betrothed not that of the formally wedded wife.[3] He makes out re-marriage as an offence calling for corporal punishment.[4] This rigour is a little strange beside his laxer provision that intercourse is permissible with a woman rescued from robbers or drowning, flood or famine, if she be not unwilling or with children or of a higher caste.[5] On remarriage his text is cited in the Smṛti-candrikā and Parāśara-bhāṣya.[6] He has also a *śloka* permitting the seeking of

[1] जारेण जनयेद् गर्भं गर्भे त्यक्ते मृते पतौ।

[2] मृते भर्त्तरि या नारी ब्रह्मचर्य्यव्रते स्थिता।
सा मृता लभते स्वर्गं यथा ते ब्रह्मचारिण: ॥

[3] अनेकेभ्यो हि दत्तायामनूढायां तु यत्र वै। वरागमश्च सर्व्वेषां लभेतादिवरस्तु ताम्। अथागच्छेयुरूढायां न तां पूर्व्ववरो हरेत् ॥ in *Smṛ. Can.*

[4] भर्त्तृगोत्रं समुत्सृज्य नारी यद्यन्यमाश्रिता। निन्द्यैव सा स्मृता लोके परपूर्व्वेति चोच्यते। परपूर्व्वा स्थिता यत्र तत्र स्यान्नाश्रित: प्रभु:। क्रमाद्दते तु धर्म्मोऽयं लब्धा वा स्वामिनी भवेत्। निरीक्षव्या च त्याज्या च परपूर्व्वापराधत:। अक्षमाश्वानवेक्षन्तीं ताड़यन् दन्डमर्हति।

[5] N. Banerji—Kātyāyana-mata-saṅgraha—चौरहस्तान्नदीवेगाद् दुर्भिक्षाद् देश-विप्लवात्। निस्तार्य्य वापि कान्तारात् त्यक्ता लब्धा क्रमागता। p. 68.

[6] स तु यद्यन्यजातीय: पतित: क्लीव एव वा। विकर्म्मा वा सगोत्रो वा दासो दीर्घामयोऽपि वा। ऊढापि देया सान्यस्मै सप्रावरणभूषणा। नीचत्वं परदेशं वा प्रस्थितो राजकिल्बिषी। प्राणाभिहन्ता पतितस्त्याज्य: क्लीवोऽपि वा पति:।

another husband by a woman whose husband is lost after espousing her.[1] He also holds the issue begotten by the second husband as clearly belonging to him.[2]

Inspite of the absence of exact chronology the gradual stiffening of the bar against the remarriage of girls once married is traceable with the progress of time. The earlier writers on sacred law excepting Vaśiṣṭha enjoined that the husband of a twice-married girl and her issue should be excluded from obsequial feasts. The former is held by Vaśiṣṭha to be a sinner.[3] Hārīta-saṃhitā quoted by Aparārka declares a *punarbhū* and the wanton woman as fit to be regarded as Śūdra-born.[4] Āpastamba-saṃhitā IX. 29 (like Aṅgiras) prescribes the penance *cāndrāyaṇa* for those who feed in feasts given on the first conception of a *punarbhū* (*Cf*. Aṅgiras 65).[5]

Kāśyapa (cited in the Smṛti-candrikā, p. 202 and by Haradatta on Āpastamba II. 13. 2), after describing the seven kinds of *Punarbhūs*, says that all these destroy the family like fire.[6] According to Jolly he was the first to extend the category of *punarbhū* to include girls whom their father had promised or intended to give in marriage to another person or whose mother was a *punarbhū* (Law and Custom,

[1] वरयित्वा तु यः कश्चित् प्रणश्येत् पुरुषो यदा। ऋत्वागमांस्त्रीनतीत्य कन्यान्यं वरयेद् वरम्।
Smṛ. Can. reads रक्ता for ऋत्वा।

[2] क्लीबं विहाय पतितं या पुनर्लभते पतिम्। तस्यां पौनर्भवो जातो व्यक्तमुत्पादकस्य सः॥
Kāt.-mat.-san. 706.

[3] Cited on p. 138.

[4] स्वैरिणी या पुनर्भूश्च रेतोधा कामचारिणी। सर्वभक्ष्या च पञ्चैता विज्ञेया शूद्रयोनयः।

[5] Aṅgiras—अन्यदत्ता तु या कन्या पुनरन्यस्य दीयते।
तस्याश्चैव न भोक्तव्यं पुनर्भूः कीर्त्तिता बुधैः॥
Āpas. saṃ.—पुनर्भूः पुनरेता च रेतोधा कामचारिणी।
आसां प्रथमगर्भेषु भुक्त्वा चान्द्रायणं चरेत्॥

[6] इत्येताः काश्यपेनोक्ता दहन्ति कुलमग्निवत्।

p. 133). *Āśvalāyana-smṛti* says that a widow married unknowingly should be abandoned and a penance performed.[1]

Brahma-purāṇa quoted by Aparārka says that the house of a man remarrying a widow is always polluted.[2] But the same writer quotes some more texts which show that the usage was still in vogue.[3] The practice is altogether prohibited by *Kratu*.[4]

Sons other than the Legitimate and the Adopted

Although the different varieties of sons mentioned by the sages, are nominally seventeen, really they make up only twelve kinds. Such is the view of *Vasiṣṭha* (Ch. XVII) and *Viṣṇu* (XV.1).[5] According to *Devala* (Dat. Can., p. 36)[6] all these kinds are divisible into four classes : (*i*) *Begotten by oneself*, the legitimate, the maiden-born, the remarried woman's son, the appointed daughter's son ;

[1] अज्ञातश्च द्विजो यस्तु विधवामुद्वहेद् यदि। परित्यज्य च वै तास्च प्रायश्चित्तं समाचरेत्। अब्दमेकं विधायाद्यावकीर्णिव्रतं चरेत्। पुत्रश्चेज्जायते तस्यामिको गोलक उच्यते ॥

[2] परपूर्व्वा यस्य गेहे भार्य्या तस्य हि नित्यश:। अशौचं सर्व्वकार्येषु देहे भवति सर्व्वदा * * स्त्रीणां पुनर्विवाहस्तु देवरात् पुत्रसन्तति:। स्वातन्त्र्यं वा कलियुगे न कर्त्तव्यं कदाचन। यत: पातकिनो लोके नरा: सन्ति कलौ युगे। Aparārka, pp. 68-69.

[3] मृते भर्त्तरि या नारी त्यक्तवत्यथ तं स्वयम्। सवर्णाज्जनयेद्गर्भं भर्त्तु: पौनर्भवं सुतम्। यदि सा बालविधवा बलात्त्यक्ताथवा क्वचित्। तदा भूयस्तु संस्कार्य्या गृहीता येन केनचित्। त्यक्त्वा भर्त्तृगृहं गच्छेद् यदि दोषं विना पुन:। भर्त्रा सा संस्कर्त्तव्या च प्रायश्चित्तादिभि: क्रमात्। Cited from Brahmapurāṇa in Aparārka, pp. 68-9.

[4] Kratu—Kalivarjya Text II.

The absolute indissolubility of the marital relation by the wife is inculcated in Bhāgavata—X. Ch. 29, Śl. 25 :

दु:शीलो दुर्भगो वृद्धो जडो रोग्यधनोऽपि वा। पति: स्त्रीभिर्न हातव्यो लोकेप्सुभिरपातकी ॥

[5] बह्वीनां द्वादश ह्येव पुत्रा: पुराणदृष्टा:। Vaśiṣṭha XVII.

अथ द्वादश पुत्रा भवन्ति—Viṣṇu XV.

[6] Devala—एते द्वादश पुत्रास्तु सन्तत्यर्थमुदाहृता:। आत्मजा: परजाश्चैव लब्धा यादृच्छिकास्तथा। (D.B. X. 7).

(*ii*) *begotten by another*—the wife's son, the secret-born son, the pregnant bride's son ; (*iii*) *the son obtained*—the discarded son, the self-given son ; (*iv*) *the optional*—the adopted, the artificial and the son bought.

Among these the pre-eminence of the *aurasa*, *i.e.*, the son of the body was assured from the beginning. He is the first in rank (*Cf*. Manu IX. 166).[1] Such is the view of Viṣṇu (XV. 2) and of Śaṅkha-Likhita cited in Dāyabhāga (XI. 1. 31). The man himself is born as the son and the wife is called *jāyā* for that reason (Manu IX. 8). This pre-eminence rested on the spiritual benefit rendered by him. He is specially qualified for the worship of the *pitṛs* or manes, which is a cardinal duty of a Hindu dating from Vedic times.[2] The word *puttra* is construed so as to bring out this spiritual purpose.[3] All religious acts are not one-sixteenth in value compared to having a son.[4] Procreation is one of the debts a man is born with (Manu VI. 35-37)[5]. The term *puttra* signified the real legitimate son—the primary sense in which it is to be understood as a general rule (Dat. Mīm. VI. 28).[6] He is the heir and is under a duty to maintain the others. (Baudh. II. 2.3.33 ; Manu IX.163).[7] *Yāska* says a *puttra* is one that

[1] Manu—स्वे क्षेत्रे संस्कृतायान्तु स्वयमुत्पादयेद्धि यम्। तमौरसं विजानीयात् पु प्रथमकल्पितम्। Viṣṇu—स्वे क्षेत्रे संस्कृतायाम् उत्पादितः स्वयमौरसः प्रथमः।

[2] जायायास्तद्धि जायात्वं यदस्यां जायते पुनः। Ṛg-Veda, VI. 52. 4; VII. 35; X. 15.

[3] Hārita—पुन्नामा निरयः प्रोक्तश्छिन्नतन्तुश्च नैरयः। तत वै त्रायते यस्मात् तस्मात् पुत्र इति स्मृतः।

[4] Śaṅkha-Likhita—अग्निहोत्रं त्रयो वेदा यज्ञाश्च शतदक्षिणाः। ज्येष्ठपुत्रप्रसूतस्य कलां नार्हन्ति षोड़शीम्। (D. B., XI. 1. 31).

[5] Vedic text : जायमानो ह वै ब्राह्मणस्त्रिभिरृणैरृणवाञ् जायते। यज्ञेन देवेभ्यः प्रजया पितृभ्यः स्वाध्यायेन ऋषिभ्य एष वा अनृणः। Tait. Saṃ. VI. iii. 10. 5.

[6] स्वे क्षेत्रे संस्कृतायान्तु स्वयमुत्पादयेद्धि यम्। तमौरसं विजानीयात् पुत्रं प्रथमकल्पितम्।
Manu IX. 166.

[7] Manu—एक एवौरसः पुत्रः पित्र्यस्य वसुनः प्रभुः। शेषाणामानृशंस्यार्थं प्रदद्यात्तु प्रजीवनम्।

aids much or assists in old age or delivers from the hell called *put*. *Manu* speaks of the different worlds that a man gains through the birth of successive descendants (IX. 137-138).[1] So also Vaśiṣtha XVII. 1-2, Viṣṇu XV. 44 and Yajñavalkya I. 78. But the *aurasa* is not any son of the body but one begotten upon a wife of the same caste after an approved form of marriage. In other words he should be borne by a *patnı*—a wife who associates in sacrifices and participates in religious merit. (Pāṇini IV. I.35)[2]; also Mit. II. 1. 5 and Vır. Mit. text, p. 55).[3] Virginhood is essential to the status of *patnī*. No *punarbhū* can be such (Yaj. I. 52 and 67).[4] The widow's right to inherit is made to rest on this status in Dayabhāga IX. 1.48.[5] The quality of the marriage depends upon the quality of the marriage-rites.[6] (Baudh. I. ix. 17; Manu III. 42 also 37-38; Yāj. I. 58-59). Wives secured for a present (of a bull and a cow as in Ārṣa) or bought for a price or *Śulka* are deprecated. (*Cf*. Manu III. 53). *Baudhāyana* holds the father of such a bride to be

[1] पुत्रेण लोकाञ्जयति पौत्रेणानन्त्यमश्नुते । अथ पौत्रस्य पुत्रेण ब्रध्नस्याप्नोति विष्टपम् । मनु-शङ्ख-लिखित-विष्णु-वशिष्ठ-हारीताः । D.B. XI. 1. 31.

Yājñavalkya—लोकानन्त्यं दिवः प्राप्तिः पुत्रपौत्रप्रपौत्रकैः । यस्मात्तस्मात् स्त्रियः सेव्याः कर्त्तव्याश्च सुरक्षिताः ।

[2] स च धर्मपत्नीजः, सवर्णा धर्मविवाहोढ़ा धर्मपत्नी, तस्यां जातः औरसः पुत्रो मुख्यः ।
Mit. II. 131.

Pāṇini—पत्युर्नो यज्ञसंयोगे ।

[3] Mit.: तत्र प्रथमं पत्नी धनभाक् पत्नी विवाहसंस्कृता पत्युर्नो यज्ञसंयोग इति स्मरणात् ।

[4] अविप्लुतब्रह्मचर्यो लक्षण्यां स्त्रियमुद्वहेत् । अनन्यपूर्व्विकां कान्तामसपिण्डां यवीयसीम् ।

[5] अनेनैव पत्नीभावक्रमेण धनाधिकारिता बोद्धव्या ।

[6] यथायुक्तो विवाहः । यथायुक्तो विवाहस्तथायुक्ता प्रजा भवतीति विज्ञायते । Baudh.

अनिन्दितैः स्त्रीविवाहैरनिन्द्या भवति प्रजा । निन्दितैर्निन्दिता नृणां तस्मान्निन्द्यान् विवर्जयेत् ॥
—Manu III. 42.

दशपूर्व्वान् परान् वंश्यानात्मानं चैकविंशकम् । ब्राह्मीपुत्रः सुकृतकृन्मोचयत्येनसः पितॄन् । दैवोढ़ाजः सुतश्चैव सप्त सप्त परावरान् । आर्षोढ़ाजः सुतस्त्रींस्त्रीन् षट् षट् कायोढ़जः सुतः । (III. 37, 38).

guilty of the sin of child-selling.[1] Āsura, Rākṣasa and Paiśāca forms are disapproved by Manu (III. 41) but not Gāndharva to the same degree (III. 24-26).[2] The wife married in the Brāhma form is preferred as the heir to those in Āsura and other disapproved forms of marriage (Vīr. Mit. text, p. 35).[3]

These ideas which upheld the pre-eminence of the *aurasa* also lay at the root of the disapproval and the ultimate elimination of the other kinds of sons. The subsidiary or substituted sons are to be thought of failing the legitimate sons. So say Manu and Atri.[4] Again subsidiary sons are not indispensable for spiritual weal (Manu V. 159).[5] All these sons, however, are pronounced heirs of their fathers who have no real legitimate sons ; but should a real legitimate son be afterwards born, they have no right of primogeniture (Dāyabhāga X. 7).[6]

The *Śaudra* or the son by a Śūdra wife disappeared by degrees with the repudiation of inter-caste marriage particularly with a Śūdra woman (*vide* Sec. *Inter-caste Marriage*). The *aurasa* is defined in Baudhāyana and Āpastamba as a son begotten by oneself on a wife of the same

[1] क्रीता द्रव्येण या नारी सा न पत्नी विधीयते। सा न दैवे न सा पित्र्ये दासीं तां काश्यपोऽब्रवीत्। शुल्केन ये प्रयच्छन्ति स्वसुतां लोभमोहिताः। आत्मविक्रयिणः पापा महाकिल्बिषकारकाः।
I. XI. 20-21.

[2] पृथक् पृथग् वा मिश्रौ वा विवाहौ पूर्व्वचोदितौ। गान्धर्वो राक्षसश्चैव धर्म्यौ क्षत्रस्य तौ स्मृतौ। (26).

[3] पत्नीशब्दादासुरादिविवाहोढ़ाया ग्रहणं धर्म्मविवाहोढ़पत्नीसद्भावे नास्तीति गम्यते।

[4] क्षेत्रजादीन् सुतानेतानेकादश यथोदितान्। पुत्रप्रतिनिधीनाहुः क्रियालोपान् मनीषिणः।
Manu IX. 180.

अपुत्रेणैव कर्त्तव्यः पुत्रप्रतिनिधिः सदा। पिण्डोदकक्रियाहेतोर्यस्मात् तस्मात् प्रयत्नतः।
Atri I. 52.

[5] अनेकानि सहस्राणि कुमारब्रह्मचारिणाम्। दिवं गतानि विप्राणामकृत्वा कुलसन्ततिम्।

[6] Devala (*op. cit.*)—सर्व्वे ह्यनौरसस्यैते पुत्रा दायहराः स्मृताः। औरसे पुनरुत्पन्ने तेषु ज्यैष्ठ्यं न विद्यते।

caste married with religious rites (which might not include the Śūdra even when inter-caste marriage prevailed).[1] And this usage of mixed marriages came to be restricted early in the Dharma-śāstras. Manu (III. 17 and III. 14) shows how different stages of intercourse with a Śūdra woman caused one's fall.[2] He and Yājñavalkya totally prohibit it. As already pointed out caste became an element in the wife's gaining the status of a *patni*.[3] (Manu XI. 166; Vasiṣṭha XVII. 13; Yāj. II. 228).

In Yāj. II. 137 direction is given as to how the patrimony is to be divided with the son of a Śudra wife.[4] *Atri* (191) says that a woman of a lower caste becomes impure on conceiving through a man of a higher caste and becomes pure when she is delivered.[5] A text of *Devala* cited in Ujjvalā (Āpas. Dh. S., page 235) shows the share to be given to a son born of a wife lower in caste.[6] *Bṛhaspati* cited in the Ujjvalā says that a Śūdrā-born son is not entitled to a share of the land.[7] The son of a wife belonging to an inferior tribe or espoused in a disapproved form of marriage is an *aurasa* son for secular purposes though he be worthless in a spiritual view.

The elimination of the maiden's son (*kānīna*) and the pregnant bride's son (*sahoḍhaja*) followed from the institution of early marriage. The highest eligibility of a girl as

1 सवर्णापूर्व्वशास्त्रविहितायां यथर्तु गच्छतः पुत्रास्तेषां कर्म्मभिः सम्बन्धः। दायेन चाव्यतिक्रमश्चोभयोः। Āp. Dh. S. II. 13. 1-2.

2 Already cited in § on Inter-caste Marriage.

3 *Cf*. Āp. Dh. S. II. xiii. 3-4. पूर्व्ववत्यामसंस्कृतायां वर्णान्तरे च मैथुने दोषः। तत्रापि दोषवान् पुत्र एव।

4 मृते पितरि कुर्य्युस्तं भ्रातरस्त्वर्द्धभागिनम। अभ्रातृको हरेत् सर्व्वं दुहितॄणां सुताहृते।

5 असवर्णैस्तु यो गर्भः स्त्रीणां योनौ निषिच्यते। अशुद्धा सा भवेन्नारी यावद् गर्भं न मुञ्चति।

6 आनुलोम्यैकपुत्रस्तु पितुः सर्व्वस्वभाग् भवेत्। निषाद एकपुत्रस्तु विप्रस्वस्य तृतीयभाक्। द्वौ सपिण्डसकुल्यौ वा स्वधादाता तु तं हरेत्।

7 शूद्र्यां द्विजातिभिर्जातो न भूमेर्भागमर्हति। स्वजातावाप्नुयात् सर्व्वमिति धर्म्मो व्यवस्थितः।

a bride is laid down in many texts including Gobhila-gṛhya sūtra,[1] where, however, for 'naked' (*nagnikā*), the opposite reading (*a-nagnikā*) is also met with.

The *sahoḍhaja*, the *kṣetraja* and the *gūḍhaja* sons were checked by certain ideas which date from a very early period. Discussions began in Vedic times as to who should be considered their true father, and whether sons of these kinds had their place in society. Thus Baudh. Dh. S. II. 2. 34 cites: Now O Janaka, I jealously watch my wife though I did not do it formerly. Āpastamba, II. 13. 6 holds that the son is of the progenitor only.[2] Vasiṣṭha, XVII. 8. 9, records the dispute as to whether the son begotten by another belongs to the begetter or the husband of the woman and he concludes that he belongs to the former.[3] So also Manu, in IX. 32, refers to the difference of opinion.[4] He says that the ancient sages held sons like the *kṣetraja* to be capable of performing the obsequies (IX. 180).[5] But with his stricter ideas he holds them to belong to their begetter (IX. 181).[6] These other sons are called by him contemptible and conducive to little spiritual benefit (IX. 161).[7]

Besides, *niyoga* and widow-remarriage and promiscuity which resulted in *kṣetraja* and *paunarbhava* sons were steadily discountenanced by the writers of the Smṛtis since the time of *Āpastamba*. In reference to these ancient usages, the sage declares that practices opposed to the sacred law should not be followed (II. 13. 9; II. 27. 4).

[1] नग्निका तु श्रेष्ठा [Read. अनग्निका तु श्रेष्ठा]—Satyabrata Sāmaśramī's Edn.

[2] जनयितुः पुत्रो भवति-साम्पराये मोघं वेत्ता कुरुते तन्तुमेतम् ।

Corr. to Baudh. II. ii. 41.

[3] क्षेत्रिणः पुत्रो जनयितुः पुत्र इति विवदन्ते । Et seq.

[4] भर्तुः पुत्रं विजानन्ति श्रुतिद्वैधन्तु भर्तरि । आहुरुत्पादकं केचिदपरे क्षेत्रिणं विदुः ।

[5] Already cited.

[6] य एतेऽभिहिताः पुत्राः प्रसङ्गादन्यबीजजाः । यस्य ते बीजतो जातास्तस्य ते नेतरस्य तु ।

[7] यादृशं फलमाप्नोति कुप्लवैः सन्तरञ्जलम् । तादृशं फलमाप्नोति कुपुत्रैः सन्तरंस्तमः ।

The reward in the next world resulting from the observance of the rules imposed by the sacred law is preferable to the offspring obtained in this manner. A text cited in Dat. Mīm., I. 64, p. 30, says: The sons made in various ways by the ancient sages, powerless modern people are not competent to make now.[1]

Bṛhaspati (Digest V, p. 337): The appointed wife's son is condemned by good men; and so are the son of the twice married woman, the son of an unmarried one, the son received with a pregnant wife and the secretly-born son of an adulterous wife.

Parāśara holds that the son of the appointed wife belongs to her husband and not to the begetter, so also the secretly-born son of the wife and the son of the widow.[2] He sanctions the twice-married woman's son by implication by his text on widow-remarriage (IV. 26). As the lawgiver of the Kali age he recognises four kinds of sons—the legitimate, the wife's son, the son given and the son made.[3] According to Nanda Paṇḍita the term *kṣetraja* is an adjective and, therefore, according to Dat. Mīm., Sec. I, p. 68, the wife's son is in effect barred out by him.

Śaunaka quoted in Devānanda Bhaṭṭa's (?) Dattaka-candrikā, Sec. I, p. 9 and also in Dat. Mīm., p. 30, admits only two kinds of sons in the present age.[4]

The five remaining descriptions of sons are neither sons of the body nor the wife's sons. The *krīta* or the son bought is akin to the *datta* or the son gifted except that a price is paid for the transfer of power over him from his natural father to the father by purchase. The *kṛtrima* and the *svayaṃdatta*

[1] अनेकशः कृताः पुत्रा ऋषिभिर्ये पुरातनैः। न शक्यन्तेऽधुना कर्तुं शक्तिहीनतया नरैः।

[2] ओघवाताहृतं बीजं यथा क्षेत्रे प्ररोहति। क्षेत्री तल्लभते बीजं न बीजी भागमर्हति। तद्वत् परस्त्रियाः पुत्रौ द्वौ सुतौ कुण्डगोलकौ। पत्यौ जीवति कुण्डः स्यात् मृते भर्त्तरि गोलकः। IV. 17.

[3] औरसः क्षेत्रजश्चैव दत्तः कृत्रिमकः सुतः। IV. 19.

[4] दत्तौरसेतरेषान्तु पुत्रत्वेन परिग्रहः। Found in Aparārka,

are both *sui juris* and not under their parents' power, the former being adopted on the adopter's proposal and the latter upon his own offer. The *apaviddha* is a foundling, incapable of giving or withholding consent, and is adopted without any such. The *dattaka* is a sacramental son since according to Manu the ceremony of adoption is in its effect like that of marriage. The libations of water which accompany the gift of a son are a rite enjoined or *vidhāna* (according to the Smṛti-candrikā—Vyavahārakhaṇḍa, II, p. 609) and *dharma* according to Viśvarūpa (on Yāj. II. 134) and essential according to Raghunandana.[1] And this rite completely severs the son from his natural ancestors to whom he no longer offers oblations and completely affiliates him to the adopter's family (Manu IX. 142).[2]

These archaic varieties of sons had to fight hard to maintain their places in the face of disapproval expressed from a very early age. Yāska (Nirukta III. 3) declares against a son other than that of the body.[3] The transfer of dominion followed from the father's power of sale over his children. This power, however, was never undisputed. Thus the Nirukta (III. 4) says that the power of gift, sale or abandonment extends over women not over the man (the male child); also over the latter, according to some, from the instance of Śunaḥśepha.[4] This power was deduced from the view of marriage not as a sacrament but as a purchase for *śulka* or consideration.

Although Gautama (xxxviii. 32) and Baudhāyana (II. 20.31 and VII. 5) mention the son given, Āpastamba (II. 13. 10)

[1] Manu IX. 168. माता पिता वा दद्यातां यमद्भिः पुत्रमापदि । Raghunandana comments—अद्भिरित्यवश्यम् ।

[2] गोत्ररिक्थे जनयितुर्न हरेद्दत्त्रिमः क्वचित् । गोत्ररिक्थानुगः पिण्डो व्यपैति ददतः स्वधा ।

[3] अन्योदर्यो मनसापि न मन्तव्यः ।

[4] स्त्रीणां दानविक्रयातिसर्गा विद्यन्ते न पुंसः । पुंसोऽपीत्येके । शौनःशेपे दर्शनात् ।

opposes the view that there could be a gift or sale of the issue[1].

The opposite view is *Vaśiṣṭha's* (Chap. XVII). He also, like Yāska, supports the case of the sons bought and self-given by the precedent of Śunaḥśepha.[2] Most of the sages include the five sons by adoption together with the twice-married wife's son in the second of the two groups into which sons are divided. They are regarded as *bandhus* or members of the *gotra* but not as heirs.

Of these five kinds the *dattaka* was preferred as a sacramental son; hence he stands third in the list of Gautama, Baudhāyana and Manu, and also of Bṛhaspati who closely follows Manu. Vaśiṣṭha, who holds marriage to be a contract and the father to have the power of gift and sale over the son, assigns to the *dattaka* the eighth place; so also Viṣṇu. *Āpastamba* who denies such power to the father and is opposed to the institution of subsidiary sons omits the *dattaka* altogether. According to him (II. 13. 6) the son is the progenitor's. Kauṭilya with his secular outlook places the appointed daughter's son next to the *aurasa* as also Devala. Yājñavalkya's list agrees with Kauṭilya's except in that the *sahoḍha* and the *apaviddha* are relegated by him to the lowest position. This was probably because the two varieties had become in his time almost obsolete and were so regarded by the law of the Royal Courts.

This is also suggested by Bṛhaspati's text: "One alone, namely, the son of the body, is declared to be the owner of the wealth left by the father, the appointed daughter is equal to him. But the other sons shall only be maintained. The son given, the deserted son, the son purchased, the

[1] दानं क्रयधर्म्मश्चापत्यस्य न विद्यते ।

[2] पुत्रो मातापितृनिमित्तकस्तस्य प्रदानविक्रयत्यागेषु मातापितरौ प्रभवतः। Ch. XV. क्रीतस्तृतीयस्तच्छुनःशेफेन व्याख्यातम्। स्वयमुपागतश्चतुर्थस्तच्छुनःशेफेन व्याख्यातम्। Ch. XVII.

son made and the son by a Sūdra wife—these, if pure by class and of irreproachable conduct, are held in the middle degree of estimation." "The position of the *dattaka*," says Mr. Jayaswal, "inspite of the Mānava laws, in actual life had not improved. This explains the attitude of Devala, Nārada and Yama (cited in the Digest, Vol. II, pp. 331-2)." It seems that "in the later Gupta time, Juristic opinion ultimately crystallised in favour of the higher position for the *dattaka* son as advocated by the Mānava code, for Bṛhaspati gives him that position. Kātyāyana is not quoted to prove a contrary opinion." A tendency is noticeable from this period onward to favour the *dattaka*. After Bṛhaspati and Kātyāyana, the compilers of the digests from Viśvarūpa and Vijñāneśvara to Mitramiśra stick to the order given by Manu and re-affirmed by Bṛhaspati and disregard Yājñavalkya altogether. The different view of Jīmūtavāhana (D.B. X.7)[1] is discarded by Jagannātha and other later commentators who represent the changed attitude of the public mind in Bengal.[2]

The gradual rise of the *dattaka* to pre-eminence is seen also in connection with the twofold division of sons. In Gautama's terms the two classes are the inheritors and the bearers of the names of both the *gotras*.[3] According to Manu (IX. 158-160) the classes are designated 'heirs to collaterals' or 'no heirs to them' (*bandhu-dāyādāḥ* and *abandhu-dāyādāḥ*). The same principle of division is admitted by Kauṭilya (III. 7. 60).[4] The principle is not recog-

[1] औरसेन तु क्षेत्रजादीनां विभागे ये पितृसवर्णा औरसपुत्राच्चोत्तमसमवर्णाः पुत्रिका-क्षेत्रज-कानीन-गूढजापविद्ध-सहोढज-पौनर्भव-दत्तक-स्वयमुपागत-कृतक-क्रीताः पुत्रास्ते औरसपुत्रभागस्य तृतीयांशभागिनः। * * * * औरसादयः षट् न केवलं पितृदायहराः किन्तु बन्धूनामपि सपिण्डादीनां दायहराः अन्ये परभूताः पितुरेव परं दायहराः न सपिण्डादीनाम्।

[2] Mayne—7th Edn., p. 216.

[3] रिक्थभाजः गोत्रभाजः।

[4] स्वयंजातः पितृबन्धूनां च दायादः। परं जातः संस्कर्तुरेव न बन्धूनाम्।

nised by Baudhāyana, Viṣṇu and Yājñavalkya. The collateral succession is opened to the *dattaka* and *kṛtrima* by Manu and also by Bṛhaspati who calls the son bought and the son found, along with these, inheriting sons or *rikthabhājaḥ*. This limitation on the inheriting capacity of the son given was removed by degrees by the commentators outside Bengal. Asahāya (cited in the Vivāda-ratnākara, p. 544) includes him in the first class against Nārada upon whose text he wrote his commentary.[1] Viśvarūpa (on Yāj. II. 136) upholds Manu's views. The Mitākṣarā (I. xi. 30-35) refuses to recognise Manu's distinction and explains it in a way as based on differences in merit amongst sons.[2] He is followed in this interpretation by the commentators who come after him.

In the Parāśara-mādhava, Hārīta's view is rejected and the Madana-pārijāta upholds the order given in the Subodhinī on the Mitākṣarā.[3] The Vīramitrodaya upon a review of the authorities holds their conflict to be due to local customs or differences in caste among the sons.[4] The Sarasvatī-vilāsa reckons the *dattaka* as the fourth in order.[5] In the Dattaka-candrikā which is most likely a digest of a very late date and of doubtful authenticity the conflict between the sages as to the *dattaka* being an heir to the collaterals or not is held to be reconcilable on the principle of his having or lacking merit.[6]

[1] दश दत्तकादयः क्रमशः पूर्व्वपूर्व्वाभावे गोत्रभागिनः जातिकार्य्यकारिणः इत्यसहायाचार्य्यः ।

[2] On Yāj. II. 135, वशिष्ठादिषु वर्गद्वयेऽपि कस्यचिद् व्यत्ययेन पाठो गुणवदगुणविषयो वेदितव्यः ।

[3] Par. mādh. (Setlur, p. 330) § 52; Mad. pār. (Setlur, p. 521).

[4] Vīr. Mit. (pp. 618-621).

[5] Sar. Vil. (Setlur, p. 161).

[6] तथा केनापि मुनिना दत्तकस्य बन्धुदायादत्वमन्येन चादायादत्वमुक्तं तद्गुणवदगुणभेदेन समाधेयम् । (p. 37).

The gradual elimination of the subsidiary sons not merely by the force of Smṛti texts but through changes in social usages and public opinion may be traced in the commentaries and digests. The commentators of Manu (Medhātithi, Govindarāja and Kullūka) do not admit the restriction of the sage's authority in regard to the different varieties of sons.[1] Jīmūtavāhana also accepts the supreme authority of Manu on the strength of Bṛhaspati's text (D. B. XII. 6. 16). He deals with the twelve kinds of sons and cites Devala's text on the respective shares of legitimate and subsidiary sons and reconciles it with Manu on the principle of superiority or inferiority in caste. Both Jīmūtavāhana and Vijñāneśvara may be taken to have been expositors of the actual law, and not speculators. The latter evidently recognises the twelve varieties of sons as still in vogue in his age. He is the first to notice the circumstances in which the wife's son turns into a son of two fathers (Sec. X—Colebrooke). He is aware of the prohibition of appointment. But this may refer to compulsory appointment since his dissent is from Dhāreśvara who held a widow to be entitled to inherit her husband's property if only she agreed to appointment. *Aparārka* is the first to notice Śaunaka's text admitting only two kinds of sons in the Kali Age. "It is to be noted that the prohibitions in the Kali age as cited by him are not found in all copies of his work," says G. Sarkar (p. 106).[2] But these prohibitions gain increasing recognition evidently from this age onward. Devānanda omits the topic of distribution of heritage amongst sons of different tribes and among secondary sons other than the *dattaka* and between the appointed daughter and her

[1] Medhātithi—end of 10th Cent. Govindarāja—11th Cent. Kullūka—13th Cent.

[2] "*e.g.*, not in Skt. College MS. Copy".—This statement is not correct—the Skt. College MS. (examined by the writer) has the quotation in question.

son as uselessly swelling the size of the work, since these usages should no longer be followed. Caṇḍeśvara's Vivāda-ratnākara—a Mithilā treatise of the first half of the fourteenth century remarks no change in regard to the twelve kinds of sons. Viśveśvara of the latter half of the same century in his Subodhinī holds Vijñāneśvara as confusing current and obsolete usages in this connection.

Mādhavācārya in his Vyavahāra-mādhava remarks that the law relating to different kinds of secondary sons and their rights prevailed in former ages and has no force in the present age although he deals with the topic in full as also with the distribution of heritage amongst sons of different tribes. He cites an anonymous text on the Kali prohibition on this point.[1] In the commentary on Parāśara he takes the four kinds of sons as illustrative and suggestive of the twelve kinds. On the strength of Āditya Purāṇa he refers widow-remarriage to previous ages although Parāśara is known to be the law-giver of the present age.

The Vivāda-cintāmaṇi of Vācaspati Miśra—a Mithilā treatise (1450-1470 A.D.)—indicates no change in regard to the varieties of sonship. Raghunandana in his Dāyatattva while abridging the Dāyabhāga treatment of the twelve kinds of sons holds inter-marriage and the institution of having sons other than the *dattaka* and *aurasa* to be obsolete. Kamalākara's Vivādatāṇḍava treats of the primary and secondary sons but regards only two kinds as permissible on the authority of the Āditya-purāṇa. He remarks that the *puttrikā-puttra* is equal to the son of the body. The son bought, the self-given son, and the son made are similar to the son given and all these six are recognised in the persent age by virtue of Bṛhaspati's text. He discusses also the rights of a Śūdra son although he refuses to consider the distribution of property amongst sons of different tribes. (Sanskrit College

[1] दत्तौरसेतरेषान्तु पुत्रत्वेन परिग्रहः। देवरेण सुतोत्पत्तिर्वानप्रस्थाश्रमग्रहः। इमान् धर्मान् कलियुगे वर्ज्यानाहुर्मनीषिणः।

MS. copy. p. 122). In the Nirṇaya-sindhu he opines that failing the *aurasa*, his son and his grandson, the eleven other kinds are competent to perform the *śrāddha*. But elsewhere in the same work he says that sons other than the given and the lawfully begotten are forbidden.

Nīlakaṇṭha's Vyavahāra-mayūkha (Ch. IV, Sec. iv, p. 41) deals with partition amongst sons of different tribes but in citing Yājñavalkya's text on the twelve kinds he adds that the secondary sons other than the legitimate and the given are to be avoided in this age.

The Vīramitrodaya of the Benares School does not defer to the authority of the Kalivarjya text so far as to hold any kind of son as obsolete, although it considers unequal distribution amongst sons as a practice to be avoided.

Nanda Paṇḍita in his gloss on the Viṣṇu-Smṛti minutely describes ten kinds of sons and their relative rights. Yet in the Dattaka-mīmāṃsā he cites Bṛhaspati's and Śaunaka's text on the validity of only two kinds of sons. The son made, according to him, is included in the son adopted since the former also is admitted by Parāśara. He regards the wife's son as inadmissible.[1] But in Chapter IV, secs. 64-74, he deals with the son of a twice-married woman.[2]

His writings, therefore, point to a difference between *śāstraic* prohibition and actual usage. Bālambhaṭṭa also follows Mādhava in holding only two varieties as lawful, and refers the Mitākṣarā exposition to former ages. But the *puttrikā-puttra* is admitted by this writer on the ground that Manu does not mention him as a secondary son. Dharma-sindhu agrees with the view of the validity of only two kinds. In the Kaustubha, it is said, a third kind also, namely

[1] कथन्तर्ह्यत्र क्षेत्रजग्रहणमिति चेत् औरसविशेषणत्वेनेति ब्रूमः। (p. 31)

[2] योऽयं पौनर्भवादीनां राज्यनियोजनाभावः स औरसव्यतिरिक्ताभाव एव। सत्यौरसे क्षेत्रजादीन् राज्ये नैवाभिषेचयेत्, पितॄणां नित्यश्राद्धादि च नैव साधयेत्, न कारयेदित्यर्थः।
(Dat. Mīm., pp. 75, 76.)

the self-given, is permissible in this age, and only nine are prohibited. Jagannātha's Vivāda-bhaṅgārṇava cites the Āditya-purāṇa and yet treats of the twelve kinds in order to complete that part of the book as well as for the use of those who not having seen such prohibitory texts admit the other kinds of sons. The practice of appointment in the country of Oḍra is due to ignorance of these prohibitions, according to him.

According to G. Śāstrī, the restriction of sons to only two varieties in the present age rests on the texts of Śaunaka and Bṛhaspati and the Bṛhannāradīya and Āditya Purāṇas. But there are other texts not noticed by the learned writer such as the passage in the Smṛtyarthasāra. In what light the prohibition has been regarded in the digests appears from the above resumè. The ancient modes of filiation, however, show, persistence in some varieties in disregard of the authorities and the digests. The history of Kulinism in Bengal proves the practical recognition of the wife's son and the secretly born son. Even before Act XV of 1856 the remarriage of widows under custom in certain ranks of society necessarily tended to legitimise the twice-married woman's son. (*Vide* § Legal Bearing of Kalivarjyas)

The Preferential Share of the Eldest Son

The award of the preferential share (*jyeṣṭhāṃśa* or *uddhāra*) to the eldest son or brother is a usage closely connected with primogeniture under which the eldest son is the sole heir subject to the maintenance of his younger brothers. Traces of both are found in the Vedas. Primogeniture, according to Dr. Sarvādhikārī, was the settled law of succession in ancient India (Tagore Law Lectures 1880, p. 176). Macdonell and Keith in the Vedic Index opine that it is clear from the Taittirīya Saṃhitā that

the eldest son was usually preferred; perhaps this was also the case after the father's death. There are evidences both of unequal distribution amongst sons by the father and of his nominating any one son to succeed him at his pleasure.[1] The position of the *primogenitus* was covetable as appears from Ṛg-Veda IV. 17. 11 which speaks of Indra as such and as the enjoyer of all riches and divider of all properties. "He officiates at the sacrifice. Then the gods admitted Indra's right of primogeniture and leadership. He who has such a knowledge is acknowledged as the first-born and leader. All his relations agree as to his right to the leadership."[2] Śunaḥśepha is described as agreeing to be adopted as son by Viśvāmitra if only he was made the first-born. Primogeniture, in the opinion of Dr. Sarvādhikārī, was weakened by polygamy—the espousal of wives of different ages and castes who bore sons whose status varied according to both these circumstances. It seems that ideas of equitable distribution among the sons bore upon the law of primogeniture from the earliest times. The ancient institution followed from the Patriarchal system under which the father ruled the family as a King his subjects, a teacher his pupils, or as a lord his slaves.[3] And on the father's death the eldest son as the heir stepped into his place as the head of the family and maintained the younger sons. This view is embodied in Gautama xxviii. 3, Āpastamba II. 14. 6, Manu IX. 105-110, Mahābhārata Anuśāsana Parva, Chaps.

[1] Pañcaviṃśa Brāhmaṇa, XVI. 4. 4.
Śatapatha Brāhmaṇa, V. iv. 2. 8.

[2] तमयाजयत्ततो वै तस्मै देवाज्यैष्ठाय श्रैष्ठ्याय अतिष्ठन्त इति तिष्ठन्तेऽस्मै स्वाज्यैष्ठाय समभिन् स्वा: श्रेष्ठतायां जानते य एवं वेद। Ait. Br. IV. 25.

[3] Nārada, I. 32-42.

105-17 and Nārada XIII. 5[1]. Āpastamba is, however, opposed to unequal division and he says (II. 13. 12) that the father should please the eldest with some choice portion of his wealth.[2]

This pre-eminence of the eldest son, according to another and perhaps later view, rested on fitness and higher capacity on which ground it may pass to a younger son, for the fortune of the family depends on ability. Such is the view of Baudhāyana (II. 2. 13) but he goes further and holds that if the son of a lower tribe possesses the requisite qualifications he should have the share of the eldest.[3]

Another principle also intervened, *viz.*, that seniority was to be determined by the caste of the mother amongst sons born of mothers of different castes. Such is the view of Vaśiṣṭha (XVII), Manu (IX. 149-153) and Nārada (XIII. 13).[4]

In the case of the father's loss of sanity and his incapacity to manage the family property, the eldest son may take over

[1] Gaut : सर्व्वं वा पूर्व्वजस्य, इतरान् बिभृयात् ।

Āpas : ज्येष्ठो दायाद इत्येके । तच्छास्त्रैर्विप्रतिषिद्धम् । मनुः पुत्रेभ्यो दायमभजदित्यविशेषेण श्रूयते ।

Manu—ज्येष्ठ एव तु गृह्णीयात् पित्र्यं धनमशेषतः । शेषास्तमुपजीवेयुर्यथैव पितरं तथा ।

Mahābh.—स ह्येषां वृत्तिदाता स्यात् स चैतान् प्रतिपालयेत् ।

कनिष्ठास्तमुपजीवेरन् सर्व्वे छन्दानुवर्त्तिनः । Anu. P., Ch. 105, Sl. 17.

[2] मनुः पुत्रेभ्यो दायं व्यभजदित्यविशेषेण श्रूयते । अथापि तस्माज्ज्येष्ठं पुत्रं धनेन निरवसाययन्तीत्येकवच्छ्रूयते । अथापि नित्यानुवादमविधिमाहुर्न्यायविदः * * ।

सर्व्वे हि धर्म्मयुक्ता भागिनः । II. xiv. 11-14. एकधनेन ज्येष्ठं तोषयित्वा । II. xiii. 12.

[3] गुणवान् हि शेषाणां भर्त्ता भवति । (13)

सवर्णापुत्रानन्तरापुत्रयोरनन्तरापुत्रश्चेद् गुणवान् स ज्येष्ठांशं हरेत् । (12)

[4] Vaś—यदि ब्राह्मणस्य ब्राह्मणक्षत्रियवैश्यासु पुत्राः स्युस्त्र्यंशं ब्राह्मण्याः पुत्रो हरेत् द्व्यंशं राजन्यायाः पुत्रः सममितरे विभजेरन् । Also Manu IX. 156—समवर्णासु ये जाताः सर्व्वे पुत्रा द्विजन्मनाम् । उद्धारं ज्यायसे दत्त्वा भजेरन्नितरे समम् ।=Nārada, XIII. 13.

the management. According to Hārīta (IV. 3) this is so, if the father is decrepit (or 'improvident', according to another reading), absent or ill. Śaṅkha-Likhita, quoted in the Mitākṣarā on Yāj. II. 115, hold the same view.[1]

The eldest son has many privileges such as salutation, incapability of being given in adoption, competency to perform obsequies, etc., all which show that he is the natural head of the family after the father's demise. But this position was lost, according to Manu IX. 213, Mahābhārata Anu. Parva 105. 7, if he cheated the younger brother.[2] According to the great epic, he cannot take anything of the common family-property without compensation to the brothers.[3]

But the power of the cadets increased by degrees. This followed from the equal right of disposition over the property descended from the grandfather. (Viṣṇu XVII. 2 ; Yāj. II. 121).

Besides, we find that the mode of partition according to the ancient law-makers provided for graded shares according to seniority among the sons.[4]

From inheritance of the whole, the share of the eldest came to be specified and restricted to a definite portion. According to Gautama (xxviii. 5-8) the eldest should receive one-twentieth as his preferential share together with a prescribed division of the cattle, the middle-most also has his defined quota and so also the youngest.[5] These details point to an

[1] अकामे पितरि रिक्थविभागो वृद्धे विपरीतचेतसि रोगिणि चेति ।

[2] अथ यो विनिकुर्व्वीत ज्येष्ठो भ्राता यवीयसः । अज्येष्ठः स्यादभागश्च नियम्यो राजभिश्च सः ।
Also Āp. Dh. S., II. 14,15—यस्त्वधर्म्मेण द्रव्याणि प्रतिपादयति ज्येष्ठोऽपि तमभागं कुर्य्यात् ।
Manu IX. 213—यो ज्येष्ठो विनिकुर्व्वीत लोभाद भ्रातॄन् यवीयसः । सोऽज्येष्ठः स्यादभागश्च नियन्तव्यश्च राजभिः । Corr. to Mahābh. Anu. P. 105. 7.

[3] Manu IX. 214—न चादत्त्वा कनिष्ठेभ्यो ज्येष्ठः कुर्व्वीत यौतकम् (आत्मार्थमसाधारणधनम्) ।

[4] Tait. Saṃ., II. v. 2, 7,

[5] विंशविभागो ज्येष्ठस्य मिथुनमुभयतोदद्युक्तो रथः......वृ ग्री वा पूर्व्वजः स्यात् ।

agricultural state of society and the distribution of possessions suited to it. In regard to property obtained by other pursuits the shares are arithmetically calculated. Gautama (xxviii. 9) and Manu (ix. 112) lay down this rule.[1] The intermediate sons have the share of the middle-most (śl. 113). In Vaśiṣṭha (Chap. xvii) the eldest is allowed two shares of cows and horses.[2] Manu further says that the son of the first wife though junior in years should have a bull to mark the honour due to him, and the first son of each wife is to have an inferior kind of bull according to the mother's status. As already pointed out, the right of primogeniture was disputed in early times as also the father's power of unequal division. Āpastamba II. 14. 7 speaks of the reservation of share for the eldest as a local custom, the general rule being equality of shares amongst brothers.[3] The latter was particularly the rule when the partition occurred after the father's death.

Further the father's power of unequal division was restricted to his self-acquisition, ancestral property being subject to the general rule of equal distribution (Gautama xxviii, Viṣṇu xvii. 1, 2).[4] The unequal distribution in favour of the eldest son though disapproved by the early law-makers did not soon disappear. In the Artha-śāstra (Ch. 63), which is a treatise of positive law, the right of the first-born to an extra chattel is allowed. Kauṭilya approves of the rule in view of the duties to the *pitṛs* that fell to the eldest son.[5]

[1] Manu—ज्येष्ठस्य विंश उद्धार: सर्व्वद्रव्याश्च यद्वरम्। ततोऽर्द्धं मध्यमस्य स्यात्, तुरीयन्तु यवीयस:। Also 156—समवर्णेषु ये जाता: सर्व्वे पुत्रा: द्विजन्मनाम्। उद्धारं ज्यायसे दत्त्वा भजेरन्नितरे समम्।

[2] द्व्यंशं ज्येष्ठो हरेद् गवाश्वस्य। [3] देशविशेषे सुवर्णं कृष्णा गाव: कृष्णं भौमं ज्येष्ठस्य।

[4] Viṣṇu—पिता चेत् पुत्रान् विभजेत् तस्य स्वेच्छा स्वयमुपात्तेऽर्थे। पैतामहे त्वर्थे पितापुत्रयोस्तुल्यं स्वामित्वम्।

[5] एकस्त्रीपुत्राणां ज्येष्ठांशो ब्राह्मणानामजा: क्षत्रियाणामश्वा: वैश्यानां गाव: शूद्राणामवय:। काणलिङ्गास्तेषाम् मध्यमांश:, भिन्नवर्णा: कनिष्ठांश:। चतुष्पदाभावे रत्नवर्ज्जानां दशानां भागं द्रव्याणामेकं ज्येष्ठो हरेत्। प्रतिमुक्तस्वधापाशो हि भवतीत्यौशनसो विभाग:।

If Manu's extant *saṃhitā* be later than Kauṭilya, as is held by Mr. Jayaswal, we find in him a continuation of the older law which, being based on express Vedic text, he is reluctant to do away with. But he shows his own inclination by whittling down the eldest son's share and making it exceptional.[1]

Yājñavalkya further develops the principle of equal division (II. 116-119).[2] Here the award of the preferential share to the eldest son is one among three possible alternatives—the decision depending on the father's pleasure. And in divisions after the father's death, even this concession disappears, according to Yājñavalkya, for then equality becomes the rule. The provision of graduated shares for sons born of mothers of different tribes is however retained by Yājñavalkya (II. 128).

This dispute as to the validity of the preferential share is settled by the Smṛti-saṅgraha by means of a text (K. V. Text I) which prohibits it in the present age. Aparārka does not know any Kali prohibition against *jyeṣṭhāṃśa*. Vijñāneśvara, however, repeatedly describes the usage as disliked by people.[3] He remarks (on Yāj. II. 116) that the unequal division relates to the father's self-acquisition in regard to which he is quite free. Āpastamba's *sūtras* are cited and it is argued that according to that sage the preferential share though favoured by some was disapproved by the sage himself, and wholly forbidden. Vijñāneśvara further says (on Yāj. II. 127) that the prohibition of unequal division

[1] उद्धारो न दशस्वस्ति सम्पन्नानां स्वकर्मसु। यत् किञ्चिदेव देयन्तु ज्यायसे मानवर्द्धनम्। Manu IX. 115 with which may be read ślls. 115-117. सर्व्वेषां धनजातानामाददीताग्र्यमग्रजः। यच्च सातिशयं किञ्चिद्दशतश्चाप्नुयाद् वरम्। एकाधिकं हरेज्ज्येष्ठः पुत्रोऽध्यर्द्धं ततोऽनुजः। अंशमंशं यवीयांस इति धर्म्मो व्यवस्थितः।

[2] विभागञ्चेत् पिता कुर्य्यात् स्वेच्छया विभजेत् सुतान्। ज्येष्ठं वा श्रेष्ठभागेन सर्व्वे वा स्युः समांशिनः। * * * विभजेरन् सुताः पित्रोरूर्द्ध्वं रिक्थमृणं समम्।

[3] तस्माद्विषमो विभागः शास्त्रदृष्टोऽपि लोकविरोधाच्छ्रुतिविरोधाच्च नानुष्ठेयः।

applies also to property appropriated by the sons and discovered after partition which has to be equally divided. Devānanda criticises the Mitākṣarā view that the preferential share was resented by people.[1] On the contrary, he holds that people favour the award of a larger share to the meritorious eldest son.[2] The Vīramitrodaya comments that the Mitākṣarā is wrong in regarding this usage as not based on the Veda, since in that case it would not have been valid in any age or required to be prohibited in the Kali age.[3]

The Conception of the Kali Age

The Prohibitions in the Kali Age cover some practices which even in Vedic times were considered of questionable propriety or disputed worthiness such as *soma*-selling, or cow-killing or the use of liquor in sacrifices, together with a certain number in regard to which the note of disapproval is sounded in the Dharmasūtras and Saṃhitās (like *niyoga* or widow-remarriage or marriage with the maternal uncle's daughter) as also some banned for the first time by the Kalivarjya texts (such as suicide from pious motives or Agnihotra or perpetual studentship or Vānaprastha). In regard

[1] एतदपि वाङ्मात्रेणैतदुद्धारविषमविभागादौ लोकविद्वेषोऽपि, प्रत्युत विद्यागुणपुण्यकर्म्मसम्पन्नज्येष्ठादौ भागाधिक्ये लोकानुरागो दृश्यते। But elsewhere (Vyavahāra Kāṇḍa, pp. 621-2) Devānanda writes: ये पुनः स्मृतिसमुच्चयकाराः शम्भुश्रीकरदेवस्वाम्यादय उद्धारादिविषयाणि बहूनि स्मृतिवाक्यानि विचारयितुं ग्रन्थविस्तरं चक्रिरे, तेषां धर्म्मज्ञसमयपुराणवचनाभ्यां कलौ सर्व्वत्र शिष्टाचाराभावस्य निश्चितत्वाद् वृथैव प्रयासो ग्रन्थविस्तरश्च जात इत्यस्माभिरुद्धारादिविषये दिङ्मात्रमेव प्रदर्शितम्।

[2] So also remarks Madana-pārijāta: यत्र च विषमविभागे लोकविद्वेषाभावस्तत्र विषमविभागो भवत्येव। p. 647.

[3] यत्तु मिताक्षराकृता श्रुतिविरोध इत्युक्तं तद्विचार्य्यम्। श्रुतिविरोधे हि सति युगान्तरेऽपि तस्यानुष्ठाने तद्बोधकवचनानां सर्व्वथाप्रामाण्यमेव स्यात् इति कलिवर्ज्यतयोपन्यासो विरुद्धः।

Vīr. Mit., Ch. I., Pt. ii, § 11.

to the third of these classes only it is evident that the prohibitions have reference to the Kali age and they arose with that limitation as to time stamped on them. But it is not so in regard to the other two. It may not be amiss to inquire how far back the prohibitions expressly on the ground of Kali age can be traced. The division of time into the declining cycle of Kṛta, Tretā, Dvāpara and Kali is not a concept clearly met with in early Vedic literature. The names, no doubt, occur but they generally designate throws at dice. Śat. Br. V. iv. 4-6: He then throws the five dice into his hand with (Vāj. Sam. X. 28) 'Dominant thou art; may these five regions of thine prosper'—now that one, the Kali, is indeed dominant over the (other) dice, for that one dominates over all the dice; therefore he says, 'Dominant thou art; may these five regions of thine prosper,' for there are indeed, five regions, and all the regions he thereby causes to prosper for him (Macdonell and Keith). The terms Puṣya, Dvāpara, Kharva and Kṛta to signify the four ages occur in Ṣaḍviṃśa Brāh. V. 6 and the word Dvāpara in Gopatha Brāh. I. i. 28. In Aitareya Brāh. VII. 15. 4 in describing the merits of exertion,[1] the terms are applied to different attitudes thus: Lying down, he is Kali; rousing himself, he is Dvāpara; getting up, he is Tretā and moving, Kṛta. *Cf.* Manu IX. 301-2 where the King in his different moods towards his subjects is called after the four names.[2]

In Gautama whose work is held to be the earliest of the extant Dharmasūtras the idea of the degenerate later age finds expression in Chap. I.[3] On the word Sāhasam (rashness or violence) Maskari's comment furnishes instances such as mixed marriage, etc.

[1] कलिः शयानो भवति संजिहानस्तु द्वापरः। उत्तिष्ठंस्त्रेता भवति कृतं सम्पद्यते चरन्।

[2] Mahābhārata—Udyoga-parva. Ch. 132, śl. 17; Śānti Parva, Ch. 21, śl. 29.

[3] दृष्टो धर्मव्यतिक्रमः साहसं च महतां, न तु दृष्टार्थेऽवरदौर्बल्यात्।

In the time of Gautama, Bühler remarks, Kaliyuga was not a definite period of calculated duration but the Iron Age of Sin opposed to happier times when Justice dwelt on earth (S. B. E.). This idea of his own age being a later fallen age occurs more than once in Āpastamba and becomes more definite. In I. v. 4 he remarks that no sages are born in these later times owing to violation of the rules of conduct. In reference to sons like the twice-married woman's or the adopted son or the son bought he admits that such usage was no doubt seen among the ancients as also acts of violence but these were breaches of the sacred law and owing to their great power they incurred no sin, but a later-born man acting in imitation thereof falls into sin.[1] *Niyoga* is not permitted, he says, owing to the weakness of men's senses.[2] The concept of Kali as a definite epoch of calculated duration in the cosmic cycle is met with in Manu Ch. I. 70-71. Thus Kali becomes a period of 1200 celestial years, *i.e.*, 1200 × 360 terrestrial years.[3] In Matsya Purāṇa Ch. 142.27,31 the duration is 40 lakhs instead of 4. The sage also declares that the sacred law varies from age to age (I.85-86), owing to the diminution in men's powers in the succeeding ages. Bṛhaspati xxv. 13 : In the ages, Kṛta, Tretā and Dvāpara, men were endowed with devotion and sacred knowledge ; in the (present) Kali age, a decrease of power has been ordained for the human race.[4]

Gloomy and elaborate forecasts of the Kali age occur in

[1] दृष्टो धर्मव्यतिक्रमः साहसं च पूर्वेषाम्। तेषां तेजोविशेषेण प्रत्यवायो न विद्यते तदन्वीक्ष्य प्रयुञ्जानः सीदत्यवरः II. xiii. 7-9.

[2] II. 27-4. तदिन्द्रियदौर्बल्याद् विप्रतिपन्नम्।

[3] इतरेषु ससन्ध्येषु ससन्ध्यांशेषु च त्रिषु। एकापायेन वर्तन्ते सहस्राणि शतानि च। Also Mahābhārata Vana P., Ch. 174, śl. 25. Also Viṣṇu xx. 6.

[4] तपोज्ञानसमायुक्ताः कृते त्रेतायुगे नराः।
द्वापरे च कलौ नृणां शक्तिहानिर्विनिर्मिता॥ Aparārka on Yāj, I. 68-9.

the Mahābhārata.[1] The Great War is said to have taken place in the transition from Dvāpara to Kali—Ādi-parva II. 13. Again the Kuru King Duryodhana is said to be an embodiment of Kali (*Ibid.* lxvii. 87-8). Kali possessed Nala (Vanaparva lix. 9) and he won at dice. Elsewhere Kali is described as possessing the Asuras (Vana. xciv. 12).

A marked feature of the Kali age is the decline of Vedic rites. This idea, embodied in the accounts given in the Great Epic, recurs in the other Purāṇas.[2]

The prohibition of Vedic rites and practices in the Kalivarjya texts was the necessary consequence of the conditions described in these passages which are reproduced in the Purāṇas, *e.g.*, in the Matsya Purāṇa which has many links with the Mahābhārata and Harivaṃśa (Ch. 144) as also in Ch. 58. 6 of Vāyu Purāṇa—a comparatively early Purāṇa (between 5th and 8th century).[3] Kūrma—a late Purāṇa—echoes the same statement in I. 29.[4]

These passages argue a decay of the social order and the scheme of life that had obtained in earlier ages and clearly point to the conditions which necessitated modifications and recession of the rules of conduct laid down in the Dharmasūtras. The prohibitions of *Agnihotra*, initiation into *Satras*, cow-sacrifice, and in part of the Horse-sacrifice, the Royal sacrifice and the restrictions on studentship, Vānaprastha and Sannyāsa were the outcome of these conditions.

[1] Vana Parva, Ch. 149, śl. 34—वेदाचाराः प्रशाम्यन्ति धर्म्मयज्ञक्रियास्तथा। Also śl. 37; also Ch. 188, śl. 32 निवृत्तयज्ञस्वाध्यायदण्डाजिनविवर्ज्जिताः। Also śl. 33; also Ch. 190, śls. 26, 29: Śānti P., Ch. 91. 8 अप्रवेत्ता त्रयी विद्या यज्ञाश्च सदक्षिणाः। सर्व्वे एव प्रमाद्यन्ति यदा राजा प्रमाद्यति —*Ibid.*, Ch. 231, śl. 68.

[2] Matsya P., Ch. 144, Sl. 17; also Ch. 166 आश्रमाणां विपर्य्यासः कलौ संपरिवर्त्तते।

[3] Ch. 58, śl. 6; and śl. 64. उत्सीदन्ति तथा यज्ञाः केवलाधर्म्मपीड़िताः।

[4] नाधीयते तदा वेदान् न यजन्ति द्विजातयः। I. 29.5.
यतयश्च भविष्यन्ति शतशोऽथ सहस्रशः। I, 29.23.

The Authority of Samaya-dharma and Purāṇa

A fundamental question in regard to the prohibitions in the Kali age is the source and basis of their authority. It is evident from the foregoing treatment that many of the practices banned rest on express Vedic texts and where expressions of disapproval occur regarding any they are balanced by other passages which sanction and approve of them. The Dharmasūtras and the metrical Smṛtis reveal similar conflict in regard to certain practices. The Kali-varjya texts comprise some verses of the sages forbidding certain practices in the Kali age, some from the Purāṇas, (Brahma, Ādi, Garuḍa, Āditya and Bṛhannāradīya) but the longest passages (in Śrīdhara and Devaṇṇa Bhaṭṭa) which string together the prohibitions and on which the Āditya and Bṛhannāradīya Texts seem to be moulded (as shown by remarkable verbal similarity and their emergence at a subsequent date) are anonymous and they conclude with the dictum that the prohibitions rest on convention made in the beginning of Kali by the wise whose conventions are authoritative like the Vedas.[1]

It seems, therefore, that the conflict of texts and doubts as to whether these practices should be discontinued were meant finally to be set at rest by these conventions and Paurāṇic texts. The question, therefore, inevitably arises whether injunctions in the Śruti and Smṛti can be restricted by conventions or Purāṇas—in other words, what is the relative authority of the several divisions of the Dharma-śāstras. G. Sarkar-Śāstrī (Adoption, p. 107) says: But there is no authority for the proposition that any rule clearly and unmistakably propounded by the *śāstras* may be abrogated in the way in which those persons (the Pariṣad

[1] इमान् धर्मान् कलियुगे वर्ज्यानाहुर्मनीषिणः। K. V. Text VI.
समयश्चापि साधूनां प्रमाणं वेदवद्भवेत्। K. V. Text XI.

or assembly of Brāhmaṇas learned in law) are said to have done. It is not necessary to traverse the large question often discussed in Mīmāṃsā treatises of the sources or proofs (*pramāṇas*) of Dharma. In connection with the Kalivarjyas the ground is narrow, *viz.*, the authority of conventions and Purāṇas.

The authority of *samayas*, *i.e.*, conventions, was recognised by the early Dharmasūtras. These were decisions either of learned assemblies or of lay bodies. Sarvādhikari at page 116 says: "These were rules which could not be said to be founded upon divine injunctions, but had grown out of the customs of the times for the better regulation of social affairs. The legal relation between man and man, as is sometimes said, arises out of mutual agreement or is deduced from approved usages." Thus Āpas. Dh. S. in its first *sūtra* indicating the scope and purpose of the work says:[1] Hence, therefore, we shall explain the sacred duties arising from practices based on conventions; and in the next *sūtra*: Authority is a convention made by those learned in the sacred law[2] and also the Vedas. Haradatta gives the traditional interpretation. The expletive (*ca*) translated as 'also' is for emphasis, says Haradatta, for the Vedas are the main authority in regard to what is or is not duty. He brings this dictum into line with Gautama: The Veda is the source of the sacred law and the recollection and conduct of the knowers of the Veda (as in Manu II. 6).[3] And he adds that though we may not get at the invisible (*apratyakṣa*) Vedas it is inferred that Manu and the others had them. For Āpastamba himself says that their lost texts are inferred from actual application.[4] Haradatta

[1] अथातः समयाचारिकान् धर्मान् व्याख्यास्यामः ।

[2] धर्मज्ञसमयः प्रमाणं वेदाश्च । [3] वेदो धर्ममूलं तद्विदां च स्मृतिशीले ।

[4] ब्राह्मणोक्ता विधयस्तेषामुत्सन्नपाठाः प्रयोगादनुमीयन्ते । *I*. xii. 10.

explains : Where, as in marriage with the father's or mother's sister's daughter, the impulse is derived from pleasure, there no *śāstra* or lost text is inferred, the pleasure itself being sufficient to account for the impulse. In I. xx. 6-7 (Chapter on Dharma) Āpastamba says : Righteousness and unrighteousness do not stalk over the earth saying 'Here we are,' neither the gods nor the fathers declare "This is Dharma and this is not."[1] What being done the Āryas praise is the sacred duty and what they blame is unrighteousness. The word Āryas means the twice-born of approved conduct, according to Haradatta. Vaśiṣṭha also emphasises the importance of decisions of those learned in *traividya*. There can be no doubt that what men versed in the sacred law, who have grown aged in the study of *traividya*, declare as the law is such in regard to purity and expiation. The Vedas being silent Manu declared the laws governing different lands, tribes and castes (Ch. I).[2]

In the light of these *sūtras* the expression 'conventions of the knowers of the sacred law' means something more than rules contained in the Smṛtis, it means a decision of learned assemblies.

According to Mr. Jayaswal this source of sacred law was ignored by the later Dharmasūtras. The *samaya*-source which was the main in Āpastamba disappears in the later *Sūtras*. The laws had already been settled and no need of the *samayas* remained. In place of the *samaya* we get Smṛti, *i.e.*, literature takes the place of the living organism. But that it did not altogether disappear is proved by passages in the metrical Smṛtis. Custom and social conduct were determined by consultations and discussions among the learned (Manu and Yājñavalkya).

[1] न धर्म्माधर्म्मौ चरत आवां स्व इति। यं त्वार्य्याः क्रियमाणं शंसन्ति स धर्म्मो यं गर्हन्ति सोऽधर्म्मः।

[2] त्रैविद्यवृद्धा यं ब्रूयुर्धर्म्मं धर्म्मविदो नराः। पवने पावने चैव स धर्म्मो नात्र संशयः। देशजातिकुलधर्म्मान् श्रुत्यभावादब्रवीत् मनुः।

Samaya is defined in Nārada X. 1: The aggregate of the rules settled amongst heretics, followers of the Veda (Naigamas) and others is called *samaya* (compact or established usage). He also points out the possibility of the modification of the sacred law to suit custom.

I. 40: When it is impossible to act up to the precepts of sacred law, it becomes necessary to adopt a method founded on reasoning, because custom decides everything and over-rules the sacred law.

According to Asahāya, Custom is shown to be superior to the sacred law (e.g., in the case of widow-remarriage and *niyoga*). He quotes a verse to the effect that immemorial usages of every province which have been handed down from generation to generation can never be overruled by a rule of sacred law.

Kātyāyana, Ch. 29, śl. 12, suggests that among the lawgivers also decisions were reached by means of deliberation and exchange of opinions.[1] And that at such assemblies the rule of majority obtained may be argued from certain texts.[2]

Bṛhaspati likewise refers to the authority of *samaya* in xxvii. 24: Such customs as are not opposed to the laws of particular countries and castes or other corporations every King should confirm in accordance with the sacred law after consulting the law-books.

The authority of *Purāṇas* as a source of Dharma or the sacred law though traceable from an early period in the history of Dharmaśāstra has varied in different ages. In Chānd. Upan.[3] (Ch. VII. 2) Purāṇa with Itihāsa is spoken of as the fifth of the Vedas. *Cf.* Gautama xi.

[1] विद्वन्मतमुपादाय ममाप्येतद्धृदि स्थितम्।

[2] विरोधो यत्र वाक्यानां प्रामाण्यं तत्र भूयसाम्। तुल्यप्रमाणकत्वे तु न्याय एवं प्रकीर्त्तितः। Gobhila III. 149 in Smṛti Samuccaya (Ānandāśrama Pubn.).

[3] ऋग्वेदं भगवोऽध्येमि यजुर्वेदं सामवेदमाथर्वणं चतुर्थमितिहासपुराणम् पञ्चमं वेदानां वेदम्।

19,[1] Vāyu Purāṇa[2] and Yājñavalkya I. iii. It is clear that the origin of Purāṇa goes back to Vedic times but this root cannot be recovered and is buried under the luxuriant growth of later times.

Bhaviṣyapurāṇa is cited as an authority by Āpastamba. Āpas. Dh. S I. xix. 13 supports by a Purāṇa text the propriety of eating food offered by anybody without previous arrangement or appointment. In I. xxix. 7 he supports the slaying of an assailant by the same authority and in II. xxii. 3-4 he recommends a life of continence. *Cf*. Manu V. 159 cited on p. 148.

These three texts commend practices and usages forbidden in the Kali age as is found in the sections on Śūdra-cooked food, the slaying of an aggressor and the life of celibacy (whether as Brahmacārins or Yatis).[3] Hence a curious case of conflict between ancient and recent Purāṇas arises, which militates against consistency and continuity between Purāṇas old and new.

But the authority of the Purāṇa is next to the Veda and Smṛti (revelation and recollection) which are the primary sources of the sacred law. *Cf*. Hārīta I. 25.[4] Indeed Manu and the other law-givers do not mention the Purāṇa as a source of Dharma (see II. 6-10). Further Vyāsa in *śloka* 15 sets forth the comparative authority of the three sources to the effect that in case of a conflict between Śruti, Smṛti and Purāṇa the authority of the first prevails and in a conflict between the other two, Smṛti is of greater

[1] धर्म्मशास्त्राण्यङ्गान्युपवेदाः पुराणम् ।

[2] इतिहासपुराणाभ्यां वेदं समुपबृंहयेत् । *Cf*. Viṣṇu cited in Smṛti-candrikā, Saṃskāra Kāṇḍa, p. 4—पुराणं मानवो धर्म्मः साङ्गो वेदश्चिकित्सितम् । आज्ञासिद्धानि चत्वारि न हन्तव्यानि हेतुभिः ।

[3] Cited on p. 61 (i) and p. 105 (iii) above.

[4] श्रुतिस्मृती च विप्राणां चक्षुषी देवनिर्म्मिते । काणस्तत्रैकया हीनो द्वाभ्यामन्धः प्रकीर्त्तितः । Hārīta, I. 25.

force.[1] Jaimini's aphorisms do not consider the Purāṇas as sources of the sacred law. The recognition of Purāṇas as a source of the sacred law is only qualified as remarked by Śūlapāṇi.[2]

The Purāṇas are not authorities in law; they may be received in explanation or illustration not in proof, remarks Prof. Wilson in the Introduction to Viṣṇupurāṇa.

Purāṇas are ancient records of certain usages and as such they are fit to be consulted, whenever a question as to such usages occurs. Again sometimes some Purāṇas reproduce Smṛti texts and in so far as a Purāṇa contains such reproduction it may be regarded as a different reading of some particular Smṛti to which it corresponds, remarks K. L. Sarkar.

The discrepancies in the enumerations of the Purāṇas are sought to be reconciled in the Vīramitrodaya and their authority established (Paribhāṣaprakāśa, p. 12). The Upapurāṇas also, it holds to be as authoritative as the main Purāṇas (p. 14).

The Kalivarjyas furnish the last instance in which the institution of *samaya* or convention was called into play to determine the rules of conduct. But it was an institution the authority of which had come to be much weakened since the time of the Dharmasūtras and this explains the reluctance shown by Digest-writers after Devaṇṇa Bhaṭṭa to invoke its authority and their reliance on the texts of the Purāṇas to support the Prohibitions in the Kali age. On a comparison of the passages it will be evident that the Purāṇa texts (Ādi, Āditya or Bṛhannāradīya), which make their appearance in the digests later than the Madana-pārijāta, agree remarkably in their wording with the anonymous *samaya-dharma* passages cited by Śrīdhara and Devaṇṇa Bhaṭṭa.

श्रुतिस्मृतिपुराणानां विरोधो यत्र दृश्यते । तत्र श्रौतं प्रमाणं तु तयोर्द्वैधे स्मृतिर्वरा

इतिहासपुराणानि च क्वचिल्लौकिकमर्थं प्रमाणयन्ति अतो धर्म्मेऽपि प्रमाणम ।

Raghunandana's Ādityapurāṇa passage has the same concluding lines as the Smṛti-Candrikā Text XI and his Bṛhannāradīya passage closes with the same words as the passage in Śrīdhara (K. V. Text VI). The iteration of the authority of *samaya-dharma* in these Purāṇa texts seems to be gratuitous, for precepts in the Purāṇas according to the orthodox view do not require such support.

These coincidences could not have been accidental. The consensus of scholarly opinion regards Agnipurāṇa as a compilation of texts on a variety of subjects taken from standard works dealing with them and its date is taken to be 9th century A. C. The Devala-smṛti quoted by Vijñāneśvara is evidently a work different from the Devala-smṛti included in the Smṛti-samuccaya (published by the Ānandāśram Press) and the opening lines of the latter prove that it was composed in the beginning of the 10th century at a time when repeated attacks of the Mahomedans necessitated provisions for the reclamation of ravished women and kidnapped males.[1] Aparārka quotes a number of passages from both Ādi- and Ādityapurāṇa among which the Kalivarjya texts do not appear. Ādityapuraṇa cannot be traced in these days and if Ādipurāṇa be the same as Brahmapurāṇa, it does not contain the Kalivarjya passage ascribed to it. Verses from Brahmapurāṇa are cited in land-grants of 5th century A. D., but the work has undergone interpolations as shown by the reference to the Koṇārka temple erected in 1241 A. C. Garuḍapurāṇa is clearly later than Parāśara-smṛti, the rules of which it recapitulates (Ch. 107—Pūrvārdha).

These circumstances point to one conclusion that the Pauråṇic passages in question were interpolated into Ādi or Ādityapurāṇa after the time of Śrīdhara and Devaṇṇa Bhaṭṭa and that the Bṛhannāradīyapurāṇa, a minor Purāṇa, was a work posterior to these digests.

[1] D. R. Bhandarkar in The Calcutta Review, October, 1933.

G. Sarkar-Śāstrī goes so far as to assert that the authority attached to the Purāṇas dates from the time of Mādhavācārya (14th century) on account of the designation which he gives to himself in the prefaces to his Parāśara-bhāṣya and Vyavahāra-mādhava, *viz.*, 'originator or compiler of the collections of all the Purāṇas.' "What he means to say is not very clear" he writes in his T L. Lectures on Adoption (p. 103)— "probably he intends to intimate that it was through his influence that the Purāṇas were collected and invested with importance." And he adds: "It was from his time that the Purāṇas have come to be regarded as authority by subsequent writers." The short discussion of the authority of Purāṇas immediately preceding would show that these remarks are not correct; for the citation of Paurāṇic texts to support some of the Kali prohibitions goes back to the time of Aparārka (K. V. Text III). And as already shown, although varying in measure from age to age, deference to the authority of the Purāṇas can be traced back to the Dharma-sūtra period although nothing like the enormous growth observed in later times marked the Purāṇa literature of that age.

The Date of the Convention on the Kali Prohibitions.

A glance at the collection of Kalivarjya texts suggests the probable date when the convention prohibiting a large number of ancient practices originated. No doubt certain practices had fallen into disuse or had been separately condemned much earlier. The tendency to do so goes back to a remote past in the history of Dharmaśāstra. But after the close of the first millennium conditions in India were so changed that the formal abrogation of practices either unsuitable or obsolete was felt to be a necessity. Text I states that certain practices no longer prevailed but the texts that follow not merely declare such desuetude but prohibit. The Brahmapurāṇa Text III first cited by Aparārka prohibits

Horse-sacrifice. His *ṭīkā* on Yājñavalkya is dated about 1125 A. D. (Kane—Dharmaśāstra, p. 334). Joy Chand was the last Hindu King to perform the sacrifice. He fell before Mahammad Ghori in 1194. Further Śrīdhara (Text VI) declares Sea-voyage as a practice prohibited by the wise in his Smṛtyarthasāra dated between 1150 and 1200. The disastrous defeat at Tarain in 1192 must have given a rude shock to the Hindu mind under which the hopes of a Hindu revival attempted by the Gupta dynasty or a re-assertion of Brahminic religion contemplated by Kumarila finally melted away. The spiritual conquest of Far Eastern countries and islands which Brahminic missionaries had carried on for centuries could no longer be pursued with safety. The Indian Ocean was infested by war-like pirates. That this was about the time of the origin of the Kali prohibitions is further suggested by Text X of Vyāsa according to which at the end of 4400 years of the Kali age a Brahmin should not practise either Agnihotra or Sannyāsa. This gives the year 1199. Putting all these circumstances together it may be reasonably concluded that the latter half of the 12th century was the time when the prohibitions were formulated by a convention of the Brahminic society.

The Present Legal Bearing of the Kalivarjyas

The authority of usage so far as upheld in the original Sanskrit texts and proved in connection with the Kali Prohibitions has been shown above. Legislation and decisions of British Courts have also accorded equal authority, if not greater, to usage. The law to be administered in Civil Cases in regard to Hindus is laid down in Sec. 15, Regulation IV of 1793 and affirmed in Secs. 8 and 9, Regulation VII of 1832. Section IV of Regulation II of 1798 defines how the exposition of the law is to be obtained from Hindu and Mahomedan Law Officers of the Court. "The Charters of the High Courts and the Regulations of the Legislature

give the next place in authority after the statute law to usage and, however in learned speculations the sacred texts may be exalted above mere human practice, there can be no doubt that the Hindu lawyers had arrived at substantially the same conclusion that the British Government has defined" (Bühler, p. 786). The texts of the sages bearing on this topic are cited and discussed in *Rawut Urjun Singh vs. Rawut Ghanasiam Singh.*[1] "The duty of a European Judge who is under the obligation to administer Hindu Law is not so much to enquire whether a disputed doctrine is deducible from the earliest authorities as to ascertain whether it has been received by the particular School which governs the District with which he has to deal and has there been sanctioned by usage. For under the Hindu system of law clear proof of usage will outweigh the written text of the Law."[2] This dictum of the Privy Council in the *Ramnad case* 1868 has had a far-reaching effect on the course and development of Hindu Law ever since. Provincial customs were carefully and industriously collected and recorded. Custom well-established has practically been held supreme. Observations to the same effect also occur in *Kudomee Dosee vs. Joteeram Kolita*[3]; "The text lays down that reason and justice are more to be regarded than mere text, and that wherever a good custom exists it has the force of law. The sacred law as contained in the texts of the sages and the digests has in consequence been widely departed from in the actual usages of different parts of the country and different sections of the community generally known as Hindus. There can be no doubt that the Hindu Law has been affected in particular

[1] 5 M. I. A., 179-181 (1851).

[2] Collector of Madura vs. Mootoo Ramalinga, B. L. R, I. (P. C.), p. 12; 12 M. I. A. (1868), p. 397.

[3] I. L. R, 3 Cal. at p. 306.

districts by particular usages and these usages have hitherto been respected unless clearly repugnant to the principles of Hindu Law."

Custom made rigid

The work of collecting and recording customs has had, however, the effect of giving fixity to them. No doubt the Hindu tenacity in regard to custom has been marked. "Orientals are commonly tenacious of their usages and customs, and more specially of their family and religious observances." [1] But the common view expressed by Macnaghten[2] that society in India is not progressive is a superficial generalisation which has come later on to be modified and revised. "In theory Hindu law seems not to admit of growth. The greatest impediment in the way of progress of Hindu Jurisprudence was offered by the theory of its Divine origin which stamped a stationary character on it"—says G. Sarkar-Śāstri.[3] The British Judicial system has not been favourable to the natural evolution of Hindu Law and this has been realised by the highest Jurists. "The Hindu law is a body of rules intimately mixed up with religion and it was originally administered for the most part by private tribunals. The system was highly elastic, and had been gradually growing up by the assimilation of new usages and the modification of ancient text-law under the guise of interpretation, when its spontaneous growth was suddenly arrested by the administration of the country passing to the hands of the English, and a degree of rigidity was given to it which it never before possessed"[4]

[1] Soorendronath *vs.* Mt. Heeramonee, 12 M. I. A. at p. 92.
[2] Hindu Law, Vol. I, p. xx. [3] Adoption, p. 84.
[4] Banerji—Marriage and Stridhan (5th Edn., pp. 7-8).

Even stronger opinions have been expressed. "Misunderstood and misapplied texts are thus playing havoc with all customs, and traditions, especially when applied with all the logical acumen and unbending rigidity of the genius of English lawyers. These gentlemen lose sight of the fact that the original texts were being constantly modified by the indefatigable labours of a host of commentators and digest-writers and learned Mīmāṃsakas. All this plasticity has been replaced by the rigidity of inert case-made law. * * This has put a stop to the normal evolution of Hindu Law which went on unimpeded till about the middle of the 18th century—the Bālambhaṭṭi commentary on the Mitākṣarā (1760-80 A. C.) being the last representative of the old digests. About this time the petrifying influence of the British Courts of Justice began to fall upon Hindu Law."[1] Change has all along been brought about by custom which has proved one of the principal instruments of legal development.[2] And it has been judicially recognised that Hindu Law and Custom have not stood still.[3] Whatever the theory, no society can remain altogether static and change in social conditions and moral and legal ideas can never be arrested. In modern Hindu Law, the function of the Digest-writers of old has largely, under pressure of circumstances, been assumed by the British Indian legislatures. The indigenous and natural agencies have no doubt been put out of action by the new system. But social legislation though not always directed by a proper regard for the tradition of the land or fully informed by an adequate knowledge of the evolution of Dharmaśāstras has registered the inevitable process of growth and to some extent made up for the atrophy of the organ of the social body that through the ages had helped on and kept pace with the normal development of the Hindu society.

[1] Govinda Das—Prel. Note to Vīr. Mit.
[2] The Position of Women in Hindu Law, pp. 17-23.
[3] Nagin Das vs. Bachoo, 20 C. W. N. at p. 708.

Sannyāsa

Preference between conflicting Smṛtis has all along been determined by usage.[1] The authority of custom is considered so high by Mitramiśra that he declares that what is illegal in one generation may by usage alone be made legal and even obligatory in another.[2] Similarly Nīlakaṇṭha referring to many breaches of the sacred law sanctioned by custom holds that its approval may even exempt harlotry from penance.[3] This paramount force of customs is illustrated most markedly in connection with the Kali prohibitions. The varied acceptance of the authority of the texts by the Digest-writers has been shown under the several sections. And actual usage in the present age in different parts of India, as recorded in judicial decisions and reports on the customs prevalent among castes and in the provinces, shows how far the import of the texts has been modified in practice. This is apparent not merely in connection with those practices that have a legal bearing or relate to *vyavahāra* but also in regard to other practices barred.

Sannyāsa though forbidden is still practised and not by Brahmins only as permitted by the construction favoured by most Digest-writers. Now if it be really illegal in the case of other castes, succession to the property of those who prefer it should be governed not by the special rules applying to Sannayāsins but by the ordinary law of succession. A virtuous pupil takes the property of a Yati or ascetic.[4] The Gosāvis[5] consider themselves as

Vīr. Mit. Tr., p. 127 ; *Utpat* case, 11 Bombay H.C.R., p. 267.
Vīr. Mit. Tr., p. 107.
Vyav. Mayū., Ch. I, para. 13.
Digest, p. 355 ; Bk. V, Texts 458-9.
Steele's Law of Castes, App. B, p. 644.

Sannyāsins, follow the rules of Śaṅkarācārya and pretend to obey the laws of Manu and other Dharmaśāstras. They are considered as true Sannyāsins.[1] And they bear the titles Purī, Giri or Bhāratī. At the same time they admit Śūdras and women into their order.[2] They cannot therefore be considered either as Sannyāsins or Gṛhasthas.[3] The rules of the different religious orders based generally on a real or fancied analogy to those of Brahmin ascetics have frequently been submitted to the Śāstrīs and a general idea of the law of inheritance prevailing amongst their members may be gathered from cases.[4] It is evident that many caste usages contrary to the *śāstras* designed generally or chiefly for guidance and control of Brahmins obtain amongst such classes and at the same time the lower orders have a tendency to adopt the *śāstraic* practices. In regard to such classes the rule hitherto followed is stated thus : A section acting against orthodox Hinduism and its law is judged according to its law or custom in its disputes.[5] But many differences still subsist which make it hazardous to apply the rules of any but the higher castes in the sphere of status and of family law, of adoption and of inheritance.[6] In view of the extensive growth of religious orders of an ascetic character in modern times the legal bearing of the prohibition of Sannyāsa to other than Brahmins may require closer attention. Succession to professed or perpetual students (an order banned by the Kalivarjya text) as also their exclusion from inheritance and share in the family property possess similar legal interest.

[1] Gungapoore vs. Musst. Jenee, 9 N.W.P. S.D. A.R., 212 ; Sungram Singh vs. Debee Dutt, 10 *Ibid.*, 477.

[2] Bühler, p. 519. [3] *Ibid.*, p. 519. [4] *Ibid.*, pp. 517, 518.

[5] Bhau Nanaji vs. Sundarabai, 11 Bom. H.C. R.P. 249. (*Utpat* case).

Bühler, p. 517.

Marriage with the Maternal Uncle's Daughter

Marriage with the maternal uncle's daughter or the father's sister's daughter, despite the prohibitions noted, still prevails in the Deccan—*e.g.*, in the Konga caste and among the Kallans who marry the latter description of relation.[1] Even amongst the Brahmins of Madras the *bhinnagotra sapiṇḍa* relationship for marriage extends only to two degrees from the mother, because there they marry even their father's sister's daughter and their mother's brother's daughter. So also among the Chhatris or Rajputs claiming to be Kṣatriyas domiciled in Bengal and Chotanagpur very few cognate girls are eschewed for marriage.[2]

Incontinence and Loss of Caste

The legal position of men and women in adulterous connection with the vile or extremely low castes needs examination in view of the Kali prohibition of social intercourse with them even after expiation. A distinction is made in favour of the mother in this respect. The cases of an adulterous wife and mother are provided by special texts and Mitramiśra insists on the distinction.[3] The outcast mother is not an outcast to her son and the outcast wife is not a trespasser in her husband's house[4] though to be kept apart. " The law, however, does not recognise the loss of social status arising from excommunication from caste as of itself depriving a wife of the right to enjoyment of her husband's property." The adulterous wife and the incontinent widow cannot, according to Nīlakaṇṭha, be heirs if *ghaṭasphoṭa* (breaking of the pitcher—the excommunicatory rite) has been performed. In *Ramia vs. Bhagi*[5] it was laid

[1] Mayne, H.L., p. 106. [2] Shastri, H.L. (5th Edn.), p. 90.

[3] Vīr. Mit. Tr., p. 153.

[4] Queen *vs*. Marimuttu, I.L.R. 4 Mad., p. 243.

[5] I, Bom, H.C.R., p. 66,

down that a wife guilty of such lapse cannot inherit whether *ghaṭasphoṭa* has been performed or not. From a widow in an undivided family grossly misbehaving maintenance may be withheld according to the Smṛti-candrikā.[1] This has been confirmed by the decision in *Valu vs. Ganga*[2] in which the Court declined to follow *Honamma vs. Timanna-bhat*, which had held that a woman having got a decree for maintenance against representatives of her deceased husband is not to be deprived of its benefit for leading an incontinent life since.[3]

An adulterous wife may claim starving maintenance from her husband only, according to the Smṛti-candrikā, [4] but not while she lives apart. This has been held in *Narmada v. Gangesh.*[5] Supposing the connexion has not been with a man of the lowest caste but for adultery with a low-caste man the husband may repudiate his wife while he himself incurs only a penance by keeping a low-caste con-cubine. Adultery by wife is generally atoned for by penance unless the husband chooses to discard her which he can equally do though at the cost of some discredit without any reason at all.[6] Even amongst Brahmins of the Deccan simple adultery entails only a penance, after which the wife "may return to her husband's embraces." The widow may not be divested of the husband's estates inherited by her for subsequent unchastity and made an exception to the general rule "once vested cannot be divested."[7] It is unnecessary to determine what would have been the effect of Act XXI of 1850 if she had been degraded or deprived of her caste in consequence of her unchastity, observed Sir B. Peacock in *Moniram*

1 Chapter 10, sec. 1—paras. 47 and 48.
2 Bom. H.C.P.J. 1882, p. 399. 3 I.L.R. 1 Bom. 559.
4 Ch. XI, sec. 1, para. 49.
5 Bom. H. C. P. J. 1881, p. 215. 6, 7 Bühler, p. 401.

vs. *Keri.*[1] If she had been, the case might have been different subject to the question as to the construction of Act XXI of 1850, for upon degradation from caste, before that Act, a Hinḍu whether male or female was considered as dead by the Hindu law, so much so that libations were directed to be offered to his manes as though he were naturally dead."

Caste Disabilities Removal Act XXI of 1850, Section I, runs thus :—"So much of any law or usage now in force as inflicts on any person forfeiture of rights of property or may be held in any way to impair or affect any right of inheritance by reason of his or her renouncing or having been excluded from the communion of any religion or having been deprived of caste, shall cease to be enforced in Courts." Cases under this Act have decided that incontinence does not work forfeiture of the ṛights of a Hindu widow.[2] Also out-casting or conversion does not deprive the father[3] or the mother[4] of his or her guardianship. A Hindu daughter has been held not to lose her inheritance,[5] or the degraded their proprietary rights.[6] This Act has proved a powerful solvent of many usages covered by the Kalivarjyas.

Sea-voyage

The prohibition of sea-voyage and the excommunication of sea-goers have been a live source of controversy since the British connexion and the time of Rājā Rāmmohan

[1] I. L. R. 5 Cal. Moniram *vs.* Keri Kolitani (1879) at p. 788.

[2] Parbati *vs.* Bhiku 4 B. H. C. R. A. C. 25 ; Honamma *v.* Timmanabhat I Bom. 559; Moniram *vs.* Keri 5 Cal. 776.

[3] Kanahi *vs.* Biddya I All. 549 ; Shamsing *vs.* Santabai on father's right to give in adoption 25 Bom. 551.

[4] Kaulesra *vs.* Jorai 28 All. 233 ; also Dwijapada *vs.* Baileau 20 Cal. 608.

[5] Advyapa *vs.* Rudrava 4 Bom. 104.

[6] Vedammal *vs.* Vedanayaga 31 Mad. 100.

Roy. In view of the ban on social intercourse with the twice born who voyage across the Sea even though they perform the penance, the prohibition in the Kalivarjya texts seems to be mandatory and not merely recommendatory. And it is so construed by some orthodox Pandits in Bengal who hold Sea-voyage as expiable in the case of other than Brahmins. Outside Bengal the view held is that penance re-establishes social commerce. The two views turn on the construction of Yāj. III. 226.[1] In practice, however, the ban in these days has come to be mostly ignored in Bengal and outside and the expiation is performed or not at the option of the party. It is undoubtedly a lapse from orthodox practice but, whatever its consequence may have been formerly, it entails no legal disabilities after Act XXI of 1850. Loss of caste has been held to disqualify for inheriting in certain cases.[2] In *Bhagwan vs. Bose*[3], however, it has been held that lapses from orthodox practice in matters of diet and ceremonial observance could not have the effect of excluding one who was born as such from the category of Hindu in Probate and Administration Act, 1881.[4]

Inter-caste Marriages

Although according to the Kalivarjya texts strictly taken marriages between different castes would entail loss of caste, these still prevail in parts of India particularly the South. For example, Nambudri Brahmins and Nayars enter into connections which are not strictly marriages. The cadets of a Nambudri Brahmin family do not marry within their own caste and this is sought to be justified on the ground of

[1] प्रायश्चित्तैरपैत्येनो यदज्ञानकृतं भवेत् । कामतो व्यवहार्य्यस्तु वचनादिह जायते ।

[2] Bhagwant *vs.* Kallu 11 All. 100; Gobind *vs.* Abdul 8 All. 546.

[3] 31 Cal. 11.

[4] Ma Yait *vs.* Maung Chit Maung 49 Cal. 310. Suraj *vs.* Attar 1 Pat. at pp. 713-14.

local usage—the fifty-ninth of the 64 rules called Kerala Anācāram said to have been promulgated by Śaṅkarācārya in A.D. 825. The peculiarities of this custom governing Nambudris are discussed in *Vasudevan vs. Secy. of State.*[1] Marriages between Tapodhana Gurabas (temple-keepers) and Idol-washers (Vaiśyas),[2] and between Kāyasthas and Vaidyas in Assam, Chittagong and Tipperah are permitted.[3] Generally, however, marriage between different castes is impossible without a specific allowance by the Caste custom.[4] The prohibition of intercaste marriages has been unwarrantably extended sometimes to marriages between sub-castes. In *Narayan Dhara vs. Rakhal Gain*[5] a marriage between a Kaivarta and a Tanti woman was held invalid. Mitter J. in deciding the case observed : "In this case there is no room for it, the parties are of different castes and a valid marriage between her and the deceased Radhu is impossible unless sanctioned by any peculiar social custom governing them." Markby J. observed in connection with restrictions on such marriages : "Whether the comparatively modern prohibition against intermarriage of persons of a different class or caste extends in this part of India to the modern sub-divisions of the Śūdra caste or class is a matter of very great importance... If the law does recognise them, of course, they cannot be ignored but if it does not, it would be wrong to impose them and I feel great hesitation in saying for the first time that there is a legal bar to these marriages." "There is nothing in the Smṛtis or Digests to prohibit such marriages," remarks Dr. Mitter on the authority of Hemādri's text[6] in The Position of Women in Hindu Society (p. 240).

[1] 11 Mad. 157. [2] Bühler, p. 410.

[3] Ramlal *vs.* Akhoycharan, 7 C. W. N. 619.

[4] 1 Cal. 1. [5] 1 Cal., p. 11.

[6] Pariśeṣa Khaṇḍa, Vol. III, Pt. I, p. 381. अतो न कन्यादाने न चापि हविर्दाने स्वशाखीयद्विजनियम इति सिद्धम् ।

G. Sarkar remarks that several of the sub-divisions are not modern but existed also in the Tretā and Dvāpara Yugas[1] but a comparison of the castes in Census Reports and in the Smṛtis and Purāṇas clearly proves that all the modern sub-divisions can hardly be identified with and included in the ancient castes.[2] Earlier decisions laid down that the general Hindu law being against the marriage between persons of different castes, local custom can alone sanction it. Hence a marriage between a Dome-Brahmin and a Hari girl was pronounced invalid in *Melaram vs. Thanooram*[3]. In an earlier case, however, it had been held that according to family custom the sons of the Rajah of Keonghur by wives of a lower caste rank after the sons by wives of the same caste.[4]

In later cases such marriages have been generally held valid.[5] In England the Divorce Court held a marriage between a caste Hindu and an Englishwoman valid and refused to recognise a disability to marry imposed by the Hindu Law.[6] The Marriage Rules of the Hindus have been considerably loosened as a result of the amendment of the Special Marriage Act III of 1872 by Act XXX of 1923. Section 2 of the Act of 1872 now applies to persons marrying, each of whom professes one or other of the

[1] G. Sastri, Hindu Law, 134, 138.

[2] Manu, Ch. 10. Bṛhad-dharma-Purāṇa, Ch. XXX.

[3] Sutherland W. R. IX, p. 552.

[4] Ranee Bistooprea *vs*. Basoodev, Suth. W. R. II, p. 232.

[5] Inderun *vs*. Ramaswamy, 13 M. I. A. 141; Ramamani *vs*. Kulanthai 14. *Ibid*., 346; Pandaya *vs*. Puli Telaver, 1 Mad. H. C. 478; Fakirgauda *vs*. Ganji, 22 Bom. 277; Mahantawa *vs*. Gangawa, 33 Bom. 693; Muthuswami *vs*. Masilamani, 33 Mad. 342; Upoma Kuchain *vs*. Bholaram Dhubi, 15 Cal. 708; Bishwanath *vs*. Sarasi, 25 Cal. W. N. 639; Mayne, p. 108.

[6] Chetti *vs*. Chetti, 1909, Probate 67. Marriage with a Burman is discussed in Ma Yait *vs*. Maung Chit, 48. I. A. 563 (37. I. C. 780).

following religions, *i.e.*, the Hindu, Buddhist, Sikh or Jain, but the Act imposes certain conditions such as severance from the joint family, incompetence in regard to any religious office or service or management of any religious or charitable trust, the loss of the right of adoption, the regulation of succession by the Indian Succession Act, 1865—all which practically mean a loss of the Hindu status. The Marriage Validation Act of 1928 permits marriages between persons of whom only one is a native Christian.

Levirate

The practice of *niyoga* which was admitted as obsolete in the *Ramnad case*[1] is stated by Colebrooke to prevail in Orissa. According to Sarvadhikari[2], it is highly reprobated amongst the higher classes and if it exists among the lower classes at all, it exists in such a form that it is of no importance whatever from a juridical point of view. He adds that amongst some of the rich and noble classes in Orissa the practice has probably assumed the modernised form of marriage with an elder brother's widow. Bühler, on the strength of Tupper's Punjab Customary Law, says that some Brahmins have adopted or retained the levirate[3].

Widow Marriage

The prevalence of widow-remarriage under custom inspite of the Śāstraic prohibition is still found in many parts of India[4], although the spread of Brahminical influence has tended to restrict and stop the usage. Among Jats, the Lingayets of South Canara, lower Mahratta castes and in general among those least affected by Brahminical influence

[1] 12 M. I. A. at pp. 415-6.
[2] Principles of Hindu Law, p. 415.
[3] H. L., p. 399. [4] Mayne, H. L., pp. 115-8.

the usage still obtains. Children by *pat* or *natra* marriages are held to be as legitimate as by the first marriage. Bombay Courts have repeatedly affirmed such widow-marriages [1]. In Madras widow-marriages are common among lower castes.[2] In Southern India the prohibition exists among Brahmins and among castes desirous of obtaining a high relative position by close observance of Brahminical customs but the restriction is entirely foreign to Dravidian ideas. According to Census Reports, *pat* marriage is found among Brahmins and Kṣatriyas and high class Śūdras, shepherds, the Komaty caste, writers, the five artisan classes who wear the thread and claim to be equal to Brahmins[3]. Among Namaśūdras of Bengal it was held valid[4]. In Behar Baniya sub-castes adhere to widow-marriage. In North Behar, Orissa and Chotanagpur it is eschewed by Brahmins, Kāyasthas, Baniyas and Rajputs. Among Darjeeling tribes it is universal. A distinction between betrothal and marriage is sometimes drawn in this connection[5]. In some communities, after actual marriage and before co-habitation another ceremony is performed, before which the girl may lawfully marry again.[6] The remarriage of Hindu widows is now expressly legalised by Act XV of 1856, the preamble to which states : " This imputed legal incapacity, although it is in accordance with established custom,

[1] Hurkoonwar *vs*. Rutton Baee 1 Bor. 475 ; Treekumjee *vs*. Mt. Laros 2 Bor. 397 ; Baee Rutton *vs*. Lalla Manoohar, Bellasis 86 ; Baeesheo *vs*. Ruttonjee, Morris Pt. 1. 103 ; Bahi *vs*. Govinda 1 Bom. 114.

[2] Murugayi *vs*. Viramakali 1 Mad. 226 ; Kattama Nachiar *vs*. Dora Singa 6 Mad. H. C. 329 ; Virasangappa *vs*. Rudrappa 8 Mad. 440 ; Sankaralingam *vs*. Subban Chetti 17 Mad. 479.

[3] Mayne H. L., pp. 115-8.

[4] *Hurrycharan vs*. Nimaichand, 10 Cal. 138.

[5] Gatharam *vs*. Moohita, 14 B. L. R. 298 ; Kallychurn *vs*. Dukhee, 5 Cal. 692.

[6] Boolchand *vs*. Janokee, 25 W. R. 386.

is not in accordance with a true interpretation of the precepts of the Hindu religion." And it provides that the Civil Law shall no longer prevent Hindus from adopting a different custom. Where the marriage is recognised by caste-custom, the widow does not lose guardianship of the person and property of minors[1]. Under the Act also she is not precluded from being the guardian of her minor children by previous marriage[2]. But she cannot give her son in adoption.[3] The Act has been held not to apply where remarriage is allowed by custom[4], *e.g.*, among Taga Brahmins[5], or Kurmis.[6] Decisions conflict on the question whether remarriage of a widow entails forfeiture of the right of inheritance to the husband's estate. In Bengal it has been held that remarriage according to caste-custom previous to the Act caused forfeiture[7]. But it has been otherwise held by Bombay and Allahabad Courts.[8]

The widow is, however, not divested of her son's estate[9] or the daughter's.[10] But it has been otherwise held in some Bombay cases which hold that she forfeits interest in the son's property.[11] The case of a widow remarrying

[1] Strange H. L., Vol. I, p. 160.

[2] Gunga *vs.* Jhalo, 15 C. W. N. 579.

[3] Panchappa *vs* Sanganbasawa, 24 Bom. 89.

[4] Parekh *vs.* Bai Vakhat, 11 Bom. 119, Gajadhar *vs.* Kaunsilla, 31 All. 161; 15 C. W. N. 579 [5] Mula *vs.* Partab, 32 All. 489.

[6] Ranjit *vs.* Radha, 20 All. 476.

[7] Rasul Jehan *vs.* Ramsarun, 22 Cal. 589; Nitya *vs.* Srinath, 8 C. L. J. 542, also Murugayi *vs.* Viramkali, 1 Mad. 226.

[8] Har Saran *vs.* Nandi, 11 All. 330; Ranjit *vs.* Radharani, 20 All. 476; Khuddo *vs.* Durga, 29 All. 122. Gajadhar *vs.* Kaunsila, 31 All. 161; Parekh *vs.* Bai Vakat, 11 Bom. 119.

[9] Akora *vs.* Boreani, 2 B. L. R. (A.C.J.), 199; Basappa *vs.* Rayava, 29 Bom. 91; Chamar *vs.* Kashi, 26 Bom. 388.

[10] Mulla, H. L., 11th Edn., p. 34.

[11] Vithu *vs.* Govindo, 22 Bom. 321; Panchappa *vs.* Sanganbasawa, 24 Bom. 89.

during the life-time of the son by her former husband is not within Section 2 of the Act.[1] But if she marries a non-Hindu after conversion under Act III of 1872, she has been held to forfeit her estate in the husband's property.[2]

Subsidiary Sons

Although the adoption of sons other than the *dattaka* (adopted son) is regarded as obsolete in the present age, the rule has been considerably modified by usage. The Kṛtrima, for instance, still continues in vogue among the Hindus of Madras and the Punjab and not merely in outlying parts of Mithila and the contiguous districts of Behar and Benares.[3] The appointed daughter's son still persists in Dravida in the institution known as the *Illatom* son-in-law.[4] The adoption of the *putrikā-putra* was held invalid in *Nursing vs. Bhartan.*[5] The validity of such a son was left undecided in *Thakur Jeebnath vs. Court of Wards.*[6] The point may be taken, says G. Sastri, to be undecided since, under the law of the Benares School which governed that case, the Mitākṣarā and the Vīramitrodaya, which are the authorities, recognise all kinds of sons and Kamalākara's Vivādatāṇḍava holds the *putrikā-putra* to be included in the *aurasa* in the Āditya-purāṇa passage.[7]

The issue of *sarvasvadhanam* marriage becomes the son of the mother's father. On failure of his issue the

[1] Lakshmana *vs.* Shiba, 28 Mad. 425; 11 A. L. J. 678.

[2] Matangini *vs.* Ram Rutton, 19 Cal. 289.

[3] Shiookaree *vs.* Jugun Singh, 8 Suth. W. R. Civil Rule 155; Collector of Tirhut *vs.* Haropersad, 7 *Ibid.*, p. 500; Lachman Lall *vs.* Mohanlall, 16 *Ibid.*, 179.

[4] Nalluri *vs.* Kamepalli, 23 C. W. N. 1010.

[5] Suther. W. R., Jany.-July, 1864, p. 194.

[6] 2. I. A. 163.

[7] Adoption, p. 135.

property inherited reverts to the mother's father's family.[1] The self-given son though an adult has been held unfit for adoption.[2] The *sahoḍhaja* or the pregnant bride's son was by implication recognised by the Privy Council in an early case[3] endorsing the view of the High Court that the child, born after marriage but begotten before it, is legitimate. In the South the gift of a son by the parents for a consideration still prevails.[4] On this side of India adoption by purchase is obsolete.[5] The only practice analogous to it is the purchase of children by Gossains, Sannyāsins and other professed ascetics for initiation into their order of devotion, the disciple becoming the heir of the master. This, however, is not adoption but a practice grounded on other provisions of the Hindu Law and on the peculiar custom of the mendicant tribes. In another case it has been declared that an adoption of this type after payment of price is not recognised in the present age.

Pālakaputras are also invalid[6]; they resemble the discarded or *apaviddha* son, and it has been held that such a son does not lose his right of inheritance in his natural family or become entitled to a share in the property of

[1] Vasudevan *vs.* Secy. of State, 11 Mad. 157; Kumaran *vs.* Narayanan, 9 Mad. 260; Chemanautha *vs.* Palakuzhu, 25 Mad. 662.

[2] Bashetiappa *vs.* Shivalingappa, 10 Bom. H. C. R. 268; Brij *vs.* Gokool, 1 Bor. 195 (217); Balvant *vs.* Bayabai, 6 Bom. H.C. R. 83 (the case of an orphan boy); Collector of Surat *vs.* Dhirsingji, 10 Bom. H. C. R. 235; Subbaluvammal *vs.* Ammakutti, 2 Mad. H. C. R. 129; Jogesh *vs.* Nritya, 30 Cal. 965. The question of the adoption of a married boy under custom among Agarwalla Jains of a twice-born Hindu caste is discussed in 14 C. W. N. 545.

[3] Paddamani *vs.* Zamindar of Marundapuli, L. R. I. I. A. 287; also Collector of Trichi *vs.* Lekhamani, S. C. 14 B. L. R. 115.

[4] Strange, H. L., Vol. 2, p. 123. [5] *Ibid.*, Vol. II, p. 132.

[6] Kalee *vs.* Shib, W. R., Vol. II, p. 281; Nilmadhava *vs.* Bishumbhur (P.C.), B. L. R., Vol. III, p. 27.

the adoptive family. Among the Oudich (Kaletiya) Brahmins either a foster-son or an adopted son might be taken. He would share equally with an after-born son and he might get both estates failing any other son of his real father.[1] Although the son of a twice-married woman is interdicted in the present age, the son of a Śūdra by a concubine has been held entitled to inherit provided she was under the absolute control of the begetter.[2] The exclusively kept woman may have been married before.[3] The question of the inheritance of a son by a concubine of a Śūdra is finally decided in *Rajani vs. Netai*.[4]

The Eldest Son's Preferential Share

The preferential share of the eldest son prohibited by Kalivarjya texts is no longer recognised. In a division of property among Hindus priority of birth does not entitle to a larger portion, the same being forbidden in the present age.[5] The right of Jethans was disallowed in many cases.[6] An opinion of Pandits, recorded by S. C. Sarkar, says that an ancient and immemorial usage in a particular country to divide immovable or other property allotting a greater share in favour of the first-born must be upheld,[7] but in general the spirit of the Hindu Law in the matter of

[1] Buhler, H. L., p. 213.

[2] Chatturbhuj Sing *vs.* Krishna, 17 C.W.N. 442.

[3] Rahi *vs.* Govind 1 Bom. 113.

[4] *F. B.* 48 Cal. 643. The Kali prohibition has, however, been regarded as applicable to Śūdras in the matter of sonship in the Fatwah of the Pandits of Tanjore—Strange, H. L., Vol. II., p. 163.

[5] Taliwur *vs.* Puhlwand Sel. S. D. A. Rep. Vol. III, p. 301. Such a woman is a *punarbhū*. Digest IV, iv. Sec. 3—CLVIII. 7-8.

[6] Bhyrochand *vs.* Rusomonee, I, S. D. 28 (36), Nilkaunt *vs.* Munee, *Ibid*, 58 (77); Sheo Buksh *vs.* Heirs of Futteh Singh, *Ibid*, Vol. II, p. 265; Lakshman *vs.* Ramchandra, 1 Bom. 561,

[7] Vyav. Dar., Vol. 2., p. 718.

inheritance has been judicially accepted to be entire equality[1]. "By the general law prevailing in this district and indeed generally under the Hindu law estates are divisible amongst the sons when there are more than one son; they do not descend to the eldest son but are divisible among all."

The Authority of the Kalivarjyas

The different sections dealing with the practices abrogated show that some of them (*e.g.*, *Agnihotra*, cow-sacrifice, horse-sacrifice, etc.) have an undisputed Vedic origin (in the Saṁhitās and Brāhmaṇas); others date from the time of the Dharmasūtras (*e.g.*, pious improvidence, curtailment of the period of impurity, etc.). The orthodox view regards the Dharmasūtras as not an integral part of the Vedas (Tantravārttika—Ch. I, p. iii, śls. 11-14).[2] Express injunctions may be traced in the Vedas in a few cases, but in some others analogies and precedents are all the Vedic origins. Exegetical subtlety may discover such origins perhaps for all the practices as well as their prohibitions. Śabaraswāmī questioned the validity of many Smṛti precepts which he held had secular motives behind them.[3] Kumārila sought to reconcile cases of conflict between the sacred law and precepts presumed to be secular—an attempt carried still further by Khaṇḍadeva.[4] But that all the precepts of the Smṛtis are not of the same authentic and obligatory nature is a traditional view dating from the time of Jaimini. In his Sūtra (I. iii. 2) he lays down the rule that the agent being the

[1] Soorjeemoney *vs*. Deenobundoo, 6 M. I. A. 526 at p. 555.

[2] तथापि तर्कवत्तेषां छन्दस्त्वं नोपपद्यते । मन्त्रब्राह्मणयोरेव च्छान्दसा विषयः स्थिताः * * * ॥
* * * वेदशब्दाभिधेयत्वं नैषामध्येतृषु स्थितम् । षडङ्गमेक इत्येतन्न च सिद्धान्तभाषितम् ॥

[3] On Jaimini Sūtra—I. iii. 14.

[4] C. Śāstrī—Fictions in Hindu Law, p. 101.

same, the authority of the Smṛti is a matter of inference.[1] Next he says: In case of conflict between the two the Smṛti is to be rejected since the inference of Vedic origin arises only in case of no conflict.[2] This qualifies the general proposition of the previous aphorism and suggests that in cases of conflict Smṛti rules require to be checked. In regard to matters of law there is not much chance of conflict between Śruti and Smṛti since few direct precepts of law are found in the Vedas but in regard to practices and usages comprised in *Ācāra* such conflicts may be found. Sūtra 4 says: A Smṛti for which a secular motive is evident is also to be disregarded.[3] Some take this aphorism as holding that an injunction coupled with a statement of reason is not obligatory but recommendatory (*arthavāda*), in other words that this aphorism has the same purport as I. ii. 26-30.[4] The traditional view (Śavara and Mādhavācārya) on the contrary takes it to mean that a secular motive inconsistent with the spiritual sanction (*apūrva*) behind the Vedic precept would invalidate the Smṛti rule. This agrees with Āpas. Dh. S., I. xii. 11. Besides, the section on Injunctions with statement of reasons[5] lays down that the reason assigned does not control the *Vedic vidhi* to which it is attached but is an *arthavāda*.

Important for the present discussion is the 4th section on the Validity of Usage (Sūtra 7). Section 7 enforces the principle: Secular reason not being found. This rule lays down that the practice of good men would not validate a usage but it must also be without a secular motive.[6]

1 अपि वा कर्तृसामान्यात् प्रमाणमनुमानं स्यात् ।

2 विरोधे त्वनपेक्ष्यं स्यादसति ह्यनुमानम् ।

3 हेतुदर्शनाच्च । 4 हेतुवन्निगदाधिकरण - Mandlik and Dr. Śiromaṇi—*vide* also Beni Prasad *vs*. Hardai Bibi, 14 All 67.

5 हेतुवन्निगदाधिकरण । 6 अपि वा कारणाग्रहणे सम्प्रयुक्तानि प्रतीयेरन् ।

That resentment of the people is a reason for abandonment of a practice is held by both Manu and Yājñavalkya.[1]

The validity of local usages is upheld by both Manu and Yājñavalkya. A practice like marriage with the maternal uncle's daughter has since Baudhāyana's time been sought to be supported on this ground. Jaimini's position is gathered from I. iii. Adhikaraṇa 8 : The scope of a Smṛti rule or usage is to be determined by analogy to the form of a universal Vedic injunction.[2] Sutra 16 : But the duty must conform to a universal injunction, every duty resting on that principle.[3] S. 17 : The application of the injunction must be governed by facts noted.[4] S. 18 : Also an eternal *vidhi* contains no modifying sign.[5] S. 19 answers : It derives its name from its place-connection.[6] S. 20 objects : In that case it would have no force in other localities.[7] S. 21 answers : Naming by place-connection is possible as (they say) this man is of Mathurā (wherever he might go).[8]

The foregoing discussion in Jaimini's Sūtras shows that he entertains the possibility of general injunctions being restricted in application to localities. Kumārila, however, is inclined to regard local usages as invalid (Tant. Vār., Ch. I, sec. 3).[9] But just as in regard to conflicting Smṛti texts he insists on conformity to the Śruti in the first instance and failing that acceptance by the worthy coupled with absence of a secular motive, so in regard to usages also he prefers that which has a Śāstraic sanction to one that has not.

1 Manu IV. 176 ; Yāj.—I. 156.

2 सामान्यश्रुतिकल्पनाधिकरण ।

3 अपि वा सर्व्वधर्म्मः स्यात्तन्न्यायत्वाद्विधानस्य ।

4 दर्शनाद्विनियोगः स्यात् ।

5 लिङ्गाभावे च नित्यस्य ।

6 आख्या हि देशसंयोगात् ।

7 न स्याद्देशान्तरेषु इति चेत् ।

8 स्याद्योगाख्या हि माथुरवत् ।

9 अद्यत्वेऽपि अहिच्छत्रमथुरानिवासिब्राह्मणीनां सुरापानं * * मातुलदुहितृविवाहासन्दीस्थभोजनादीनि दाक्षिणात्यानां * * * अतिस्थूलानि प्रतिपुरुषजातिकुलावस्थित-सूक्ष्मस्वधर्म्मव्यतिक्रमणानि त्वनन्तभेदानि सर्वत्र विगानहेतुदर्शनानि च प्रायेणैव सम्भवन्तीति नैतज्जातीयकमिश्रसदाचारकर्म्मत्वाध्यवसानसंभवः ।

This may be gathered from the section on the Validity of Usage sanctioned by the Śāstras (Jaimini I. iii. Adhikaraṇa 5).[1] S. 8 objects : Conflict (with the Vedas) not being visible (in usages), confusion of co-ordinates would arise.[2] S. 9 answers : The one embodied in express texts or following from them prevails.[3] Kumārila is decidedly of opinion that usages opposed to the Smṛtis have no validity.[4]

The question of the Validity of the Kalivarjyas has exercised the minds of the digest-writers from an early date. Hemādri prefaces K. V. Text 13 with verses to the effect that practices enjoined formerly were prohibited by the learned by convention in the Kali age owing to the absence of virtuous men. He then quotes the long Smṛticandrikā passage (Text XII) and, to support the authority of conventions referred to in its concluding lines, cites Āpas. Dh. S I. i. 2. Next he gives his reasons for the acceptance of the authority of the convention. His argument may be thus rendered : Now the question is whether what is prohibited in the Kali age rests on presumed (Vedic) text or on an evident (ritualistic) purpose. It is not for any evident purpose (relation to some rite) for, as it conduces to no positive act, no such purpose should be assumed. Nor can it be otherwise (*i. e.*, due to a presumed text) on account of the objection of discrepancy (between injunctive and prohibitive texts). Although it does not import the performance of any act, still as leading to a knowledge of discrimination (from practices permitted), and being thus for an evident purpose, it is not open to that objection. Otherwise, if no text be valid that does not uphold a ritual there cannot be the perusal of texts on Rājasūya, etc. on the part of a

1 पदार्थप्राबल्याधिकरण। 2 तेष्वदर्शनाद्द विरोधस्य समा विप्रतिपत्तिः स्यात्।

3 शास्त्रस्था वा तन्निमित्तत्वात्।

4 ततश्च मन्वादिवाक्यप्रतिषिद्धाचाराणां प्रामाण्यमशक्यमभ्युपगन्तुम्।

— Tantra-vārttika, p. 211.

Brahmin. Further the course to be taken in regard to Rājasūya, etc. holds here also. Besides to say that is to declare the invalidity of other Smṛti texts (*i.e.*, other than the one resting on convention) on Kali prohibitions. From the absence of a visible purpose such as pertains to the injunction on the perusal of the Vedas, no invalidity results, since, as in their case so also in regard to this, strict acceptance by the twice-born orthodox is common. Therefore, if a visible purpose such as lies behind the texts on the daily Vedic recitation be lacking in this case, what does it matter? (Catur. Cint.—Pariśeṣakhaṇḍa, Ch. XIV). Hence the sanction behind the Kalivarjya text is concluded to be acceptance by the orthodox twice-born, in other words, the sanction of usage.

In the Vīramitrodaya the question of the relative force of conflicting Smṛtis is discussed.[1] A Bhaviṣyapurāṇa passage is cited distinguishing Smṛtis into five kinds :—(1) for a visible purpose, (2) for an invisible or spiritual purpose, (3) for both, (4) based on reason and (5) repetitive. And then he adds : In a conflict between Smṛti and usage the former prevails since it directly argues a Śruti text. Usage is weak since it leads to an inference of Śruti through a Smṛti. For instance, by the Smṛti prescribing the present of the bride's cloth to the knower of the Sūryā Ṛks, the usage of the bride putting on the cloth on the fourth day is negatived. So also the marriage of the maternal uncle's daughter is opposed by the Smṛti " by marrying the maternal uncle's daughter (a Brahmin should perform a penance)." So also between Smṛti texts. " One shall fling oneself down from the hill *Kedāra*"[2]—this unauthentic heretical Smṛti is opposed by the canonical texts of Manu and others—"The wise man shall never kill himself." So also the authentic Smṛti " to the Brahmin

[1] Paribhāṣāprakāśa, p. 19 · [2] Paribhāṣāprakāśa, p. 26.

four wives are ordained" is disapproved by the commendable Smṛti texts of Yājñavalkya and others as to the marriage of the twice-born, etc. Similarly "In no case shall one kill a Brahmin"—this Smṛti being of an invisible, *i.e.*, spiritual import, negatives the Smṛti with an evident secular purpose "Slay the slayer, etc." * * Also the Smṛti based on Arthavāda and connected with churning "They slay the ox or the cow when a king of men comes or any other worthy man" is negatived by an injunctive Śruti "Do not slay the innocent cow who is Aditi." So also in regard to usages. As the Mitākṣarā says: Of usage, approval of conscience, desire based on righteous resolve, each preceding one is of more authority than the following. In some cases even by a weak precept a strong one may be barred. For example, even the express Śruti text "In Sautrāmaṇī he takes liquor-cups" is barred by the Smṛti: "In the Kali age these practices though sanctioned by the sacred law are prohibited by the wise. Otherwise there would be the objection of inapplicability (for the latter)". He also quotes verses from Viśvāmitra (=Apas. Dh. S. I. x. 6): What the Āryas knowing the Vedas commend when done is Dharma or sacred duty and what they disapprove is its opposite.

There were two views on the import of the Prohibitions. According to the followers of the Vārttika (by Kumārila) they denote condemnation of the practices as sinful. According to the followers of the Digests they are unqualified prohibitions since otherwise there would be an overthrow of the sacred law. So comments Dāmodara Bhaṭṭa.[1]

In recent times Judges in British Courts as well as Jurists have considered the force of the Kali prohibitions. In regard to those with a legal bearing, the view generally

[1] एते च निषेधा इति वार्त्तिकानुसारिणः। निबन्धानुसारिणस्तु धर्म्मविप्लवापत्तेरेते पर्य्युदासा एवेति मन्यन्ते। निषेध = declaration of sinfulness. पर्य्युदास = nvalidation.

held is that they are obligatory, but in the case of marriage with the maternal uncle's daughter local custom has been held to override the clearest texts. Certain kinds of subsidiary sons other than the adopted have also been held valid on the same ground. The force of the prohibitions has not yet been comprehensively examined. G. Śāstrī observes: The innovations under the name of Kalivarjya or practices to be avoided must have acquired their present authority as Sir William Jones was misled into giving prominence to them by inserting at the end of his translation of Manu an English version of the texts of the Upapurāṇas, one of which was palmed off on him as Smṛti or a passage of law (Intr. to Viv. Rat., p. xxxviii). Jagannatha's Vivādabhaṅgārṅava of which Colebrooke's Digest is the translation accords similar weight to the Kalivarjya texts cited therein. G. Śāstrī further remarks (*Ibid.*, p. xxxiv): As the doctrine of certain practices being unnecessary to be observed in this Kali age, though sanctioned and commanded by the Śāstras, was comparatively reçently introduced, the Pandits who were appointed to advise the English Judges on points of Hindu Law and usage, somehow or other misled them by incorrectly representing the doctrine to be an authoritative and imperative one which the Judges were bound to act upon, although it was really intended by its propounders to be merely recommendatory and preceptive. But it is hardly possible to regard all the usages comprised in the Kalivarjyas in this light. The distinction between positive law and moral precept goes back to the time of Jaimini and corresponds to *kratudharma* and *puruṣadharma* (The Position of Women in Hindu Law, p. 15). According to K. L. Sarkar (T. L. lectures, 1905, p. 52) the Mīmāṃsā Sūtras make another division of the Vedic law, *viz.*, Vedic law relating to individual culture and Vedic law relating to duties of man as a member of the Vedic community. The latter, he

holds, is of a positively obligatory character while the former is of the nature of religious precepts. The distinction between positive rule and moral precept is clearly recognised by Vijñāneśvara and Jīmūtavāhana and followed by both the Bengal School and the Mitākṣarā School (*Wooma vs. Gokoolanund*, I. L. R. 3 Cal., p. 587, P. C.). To some extent the distinction may seem to apply to the Kalivarjyas, the practices relating to *vyavahāra* appear to be more generally eschewed than those pertaining to *ācāra* (such as, *sannyāsa* perpetual studentship, or *Agnihotra*) which are still clung to. But many of the latter also are scrupulously avoided (such as, cow-sacrifice or the use of liquor in Sautramaṇī). It is therefore not possible to regard all the prohibitions as either mandatory or preceptive.

Vidyākara Vājapeyī—who is cited as an authority by Raghunandana—in his Nityācārapaddhati (A. S. B. Pbn.) says: "The prohibition of the carrying of the *kamaṇḍalu* is rightly held as of optional import by the rule: An option where the enjoined is interdicted. So also the ban on *surāgraha-homa*, curtailment of impurity in consideration of *Agnihotra* and Vedic recitation imports option. As for what is said as to the begetting of son by the husband's younger brother, the gift to a better groom of a girl already given, the killing of a cow in sacrifice or for guest-offering, the marriage of a woman of another caste, the taking of sons other than the begotten and the adopted—all these being forbidden in the Kali age, that is only for preventing excessive addiction, on the ground of the impropriety of prohibiting what is ordained. Hence there is nothing wrong in doing these. Likewise the avoidance of the third stage of retirement to the forest, prolonged student-ship and expiation by death is merely of the nature of *arthavāda* (commendatory statement) in view of the weakened vitality of men." The prohibitions are thus deprived of all force by this digest-writer of Orissa.

Their force has been determined by usage in varying degrees in the case of the different practices. They were called into existence by social conditions, necessities of the times and public opinion. Behind them lie changed ideas of social relations and ceremonial conduct. Tenacity in adhering to the past, its usages and institutions, which is a marked trait of the Hindu character, has kept some of the forbidden practices still alive and different conflicting texts have been construed and reconciled in the Digests to support the retention of these in the present age.[1] For these reasons a study of the Kalivarjyas is of value both to the student of Hindu social history and to the Jurist. It will help to turn the light of public attention upon corners of the life of the Hindu community through the ages which have hitherto been imperfectly illuminated and serve to show how despite the charge of unchangeability generally brought against the Hindu society it has moved and adapted itself to changing ideas and conditions.

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[1] The necessities of social existence have forced commentators by degrees from uninquiring submission to the letter of inspired precepts and a sufficient authority can now be found within the Hindu Law itself for a development of its principles in accordance with improved moral consciousness of the castes—*Mathura vs. Esu Naikin*, 4 Bom., p. 545.

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